Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837
[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, DECEMBER 6, 1958
Vol. CXXII No. 49 PAGES 793–812
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange)
Showroom and Advertising:
11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s*. 9*d*. (including Reports), 1*s*. 9*d*. (without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

Words and Blows

The common saying that words do not justify blows is not a bad guide to behaviour in general, but it must not be taken as literally true in all circumstances. In the relation between husband and wife, for example, although the husband is not nowadays entitled to chastise his wife, there may be circumstances in which some measure of violence due to her provocation by words can be sufficiently justifiable to absolve him from a charge of cruelty.

The case of *Douglas* v. *Douglas* (*The Times*, November 20) is of special importance to magistrates because it dealt with this and certain other basic principles to be observed in dealing with allegations of persistent cruelty. It was an appeal by the wife from the dismissal by Southampton justices of her summons alleging persistent cruelty by her husband. A pleasant feature of the case was that both Lord Merriman, P., and Collingwood, J., commended the justices for the care they had shown in dealing with the case.

It was admitted that the husband had on some occasions used some measure of violence towards his wife, but the magistrates had found that this was to some extent due to her nagging and abuse. It was submitted on behalf of the wife that nagging and words could never justify any form of violence. This however was described by the President in his judgment as conflicting essentially with the principle contained in the speech of Lord Normand in *King* v. *King* [1952] 2 All E.R. 584, 596, that in cases of cruelty the general rule is that the whole matrimonial relations must be considered and that that rule is of special value when the cruelty consists not of violent acts, but of injurious reproaches, complaints, accusations or taunts.

Untrue accusations might be made without probable grounds yet they might not amount to cruelty. They might have been provoked by the cruel conduct of the other spouse. Lord Normand, said the President, was dealing with the converse of the present case.

Cruelty and Persistent Cruelty

It is sometimes sought to distinguish between the meaning of cruelty in the Summary Jurisdiction (Separation and Maintenance) Acts and in the Matrimonial Causes Act, but in *Douglas* v. *Douglas, supra*, the Divisional Court re-affirmed the principle that the word cruelty must be interpreted in the magistrates' courts in the same way as it is in the Divorce Court. The difference in proving a case is that the magistrates have to be satisfied that the cruelty is persistent.

An argument put forward by learned counsel, but not accepted by the Court, was that because persistent cruelty was, in a magistrates' court, a subject of complaint by a wife but was not yet a subject of complaint by a husband, the Court ought not to take into account such matters as nagging by the wife or anything which might be a matter of complaint by a husband in the Divorce Court, in considering the question of provocation to any form of physical violence.

It will be remembered that in *Atkins* v. *Atkins* [1942] 2 All E.R. 637, nagging which caused injury or danger to health was held to constitute cruelty, and in *Douglas* v. *Douglas, supra*, it was conceded that in the Divorce Court nagging could be a matter of substantive complaint in an answer or cross-petition, but it was argued that it could not be made the basis of a plea of provocation in connexion with an allegation of violence. The answer to that, said Lord Merriman, was that nothing less than all the circumstances, on both sides, had to be considered before the issue of cruelty could be answered.

The wife's appeal was dismissed.

Cases of persistent cruelty that come before magistrates' courts are often simple enough: proof of a series of recent assaults, hardly denied and certainly not sought to be justified. The difficult cases are those where there is no gross violence or obvious cruelty, and where the husband seeks to justify or explain his conduct. Then it is not enough merely to prove a few recent

acts, and it may be necessary to go back on the married life of the parties, and to see what lies behind, what is the relationship between them and how they act and react upon each other. The case of *Douglas* v. *Douglas, supra,* shows that justices advised by a competent clerk are quite capable of dealing with the issues of fact and law that may arise.

Prison, Not Borstal

The nine youths who were sentenced each to four years' imprisonment for assaults in the course of what was described as a "nigger hunt" applied for leave to appeal against sentence, and the Court of Criminal Appeal treating the hearing as the hearing of the appeals dismissed them (*R.* v. *Hunt and Others, The Times,* November 26).

If it occurred to anyone to ask why these young men were not sentenced to borstal training, the answer was supplied in the judgment of the Court of Criminal Appeal, which was delivered by Paull, J., who said that the Court did not agree that a sentence of borstal training was better than imprisonment for these youths. These were just the types of offence where, if the offender went to borstal, he might well boast of his prowess. Counsel had urged that the sentences placed too much emphasis on retribution and not enough upon reform. The learned Judge observed that in young men's prisons there was ample opportunity to work, train, and have recreation. The Court had weighed carefully and supported every word used by the trial Judge when sentencing the youths, and thought his words were wise, just, and necessary. The time had certainly come for the Courts to put down offences such as these with a heavy hand.

Personating a Probation Officer

There are many forms of personation as an offence, some statutory, some common law. Occasionally, one hears of a case of personating a police constable for some improper purpose, but until we read an account in the *Newcastle Journal* we had not heard of an instance of personation of a probation officer. It was dealt with at Sunderland quarter sessions, where the prisoner was sentenced to five years' imprisonment for obtaining goods by false pretences. He had previous convictions and was said to have been only 10 days out of prison when the offences were begun.

The method adopted was for the prisoner to telephone to a shop saying he was a probation officer and would be sending a man to get clothes to a certain value. In due course the prisoner himself went to the shop, and on the strength of the message was supplied with the clothing.

If, as is not altogether unlikely, some probation officers have some sort of arrangement with tradespeople for the supply of articles such as clothes or boots for their probationers and others in need of immediate help, the perpetration of a fraud upon them will make things more difficult. It will be necessary to check by some means every message asking for goods to be supplied, and it may even discourage traders to oblige probation officers. The fraud upon the tradesman hits him, and its other results may be unfortunate.

The Obliging Clerk

The necessary duties of a clerk to justices are many and various and fees are prescribed for the performance of many of them. They are in constant and close contact with the members of the public who have business, for one reason or another, with magistrates' courts and the way in which they perform their duties and deal with the public can have a considerable effect upon the respect in which magistrates' courts are held. We were pleased, therefore, to read of a kindly act by a magistrates' clerk which he was not in any way called upon to perform but which must have been greatly appreciated by the defendant who benefitted from it.

An 85 year old driver, a former police constable with 26 years' service, was convicted of driving without due care and attention after his car had collided with a bus. The court thought it right to order that he be disqualified until he had passed a driving test. Unfortunately the defendant had driven in his car to the court. How was he to get it home? His problem was solved for him by the clerk of the court who drove him home in the car. A small matter you may say, but a very kindly and thoughtful act. The report of the case appeared in *The Birmingham Post* of October 29.

The Preston Motorway and Outsize Loads

A Ministry of Transport and Civil Aviation press notice gives information about proposals for allowing vehicles carrying abnormal indivisible loads to use the Preston By-pass Motorway after it was opened on December 5, 1958, and during the experimental period up to August 1, 1959.

The Special Roads (Classes of Traffic) Order, 1958, came into force on August 5, 1958, and is due to expire on August 1, 1959, unless it is previously revoked. It is made under powers given by s. 2 (3) of the Special Roads Act, 1949, and it varies the composition of the class of traffic specified in sch. 2 to the Act as class I by excluding from that class motor-cycles with a cylinder capacity of less than 50 cubic centimetres and vehicular agricultural machinery, and from that of the traffic specified as class II vehicles used for the conveyance of abnormal indivisible loads other than those constructed for service or defence purposes.

The new proposals will be given effect to by regulations made by the Minister. They will allow a limited use of the motorway by vehicles carrying abnormal indivisible loads and will also place restrictions on the carriage on that motorway of exceptionally wide loads carried on normal vehicles.

Control of the vehicles so dealt with will be exercised by the chief constable of Lancashire. Any load the movement of which is not covered by the Motor Vehicles (Authorization of Special Types) General Order, 1955, will need to be the subject of an individual order issued by the Ministry. Vehicles and loads up to 12 *ft.* wide may at any time during the experimental period be allowed to use the motorway at the discretion of the chief constable. Loads wider than this will be subject to more detailed control. None will be allowed during December, 1958, nor in February, April and June, 1959. During January, March, May and July as many as possible will be chosen for authorization according to width and other relevant factors. This authorization during alternate months will enable comparison to be made between traffic conditions when such vehicles are prohibited and those when they are permitted.

The above information and other details of interest to those concerned with loads of the kinds referred to is given in the press notice referred to and in a Ministry letter of November 10, reference VRT. 29/2/001, which has been sent to the secretaries of various organizations interested in the matter. The latter invites any comments and suggestions which the recipients may wish to put forward.

Banishment by Recognizance

Decisions of the Court of Criminal Appeal have made it appear that a requirement in a probation order that the probationer should leave and remain outside Great Britain is both unlawful and impracticable, but that what is called a common law recognizance, ordered by a Court of Assize or quarter sessions (though not, we think, a magistrates' court), may, in proper circumstances include a condition to that effect. The decision of the Court of Criminal Appeal in *R.* v. *Ayu* (*The Times*, November 18), makes the matter clearer. The appellant had been convicted as an incorrigible rogue and at quarter sessions he had been sentenced to 12 months' imprisonment and ordered to be bound over to accompany an escort to the train, boat or aeroplane, where he would be sent to Nigeria and not to land again in this country for five years thereafter, in default of entering into the recognizance to be imprisoned for six months.

In delivering the judgment of the Court of Criminal Appeal, Lord Parker, C.J., referred to the appellant's previous convictions, and said that if it were possible to make such an order to send him back to his own country and for him to stay there, it would be better. It seemed clear that it was possible to make an order binding a man over to come up for judgment when called upon, which was done in lieu of sentence, and that had been done in one or two cases and approved by this Court. But the Court knew of no case where that condition could be made part of an ordinary binding over order at common law. Lord Parker referred to the power to bind over a man to come up for judgment, and in effect to say by way of a condition that the prisoner would not be called upon to come up for judgment if he remained abroad. Such an order could not be made in addition to a sentence of imprisonment. The recorder, as a magistrate, could make an ordinary common law order for binding over, but could not include such a condition. The order would therefore be quashed.

The power of magistrates under common law, to bind over is generally considered to be limited to the conditions to keep the peace and to be of good behaviour. They have no statutory power to bind over to come up for judgment, but such a power is beyond doubt possessed by Courts of Assize and quarter sessions.

Evicted Families

Our note on Evicted Families at p. 677, *ante*, has prompted Mr. C. Price, O.B.E., clerk to the Belper urban district council, to send us some information about discussion which has taken place in Derbyshire on this difficult question. He tells us that he and Mr. David R. Perry, clerk to the Ripley (Derbyshire) urban district council, have for some time been interested in the problem and at the request of the Derbyshire Urban District Councils' Association they jointly presented a paper on the subject at the last meeting of the association. As a result of the submission of the paper, the association have appointed a delegation to meet the Derbyshire county council (welfare authority), to discuss the matter generally.

We think our readers may like to have the benefit of seeing, in particular, the suggestions put forward by Mr. Price and Mr. Perry, and with their permission we print the paper at p. 804, *post*.

Further Repeals of Emergency Legislation

The House of Commons has just given a second reading to the Emergency Laws (Repeal) Bill, which marks a further mile-stone on the way to total abolition of emergency legislation. The Bill comprizes 10 clauses and four schedules. Clause 1 repeals the substance of the Supplies and Services Acts and the Emergency Laws Acts and provides that, subject to the provisions of the Bill the regulations made under them shall cease to have effect. Clause 2 has three main effects. First, it specifies the regulations which are to continue in effect by virtue of the Bill itself. These are five substantive Defence Regulations (The Defence (General) Regulations 55, 55 AA, 55 AB; Defence (Finance) Regulation 2 A; Defence (Armed Forces) Regulation 6); the Import, Export and Customs Powers (Defence) Act, 1939; the Ships and Aircraft (Transfer Restriction) Act, 1939; the Government and Other Stocks (Emergency Provisions) Act, 1939; and the amendment of the Ministry of Supply Act, 1939. Secondly, it provides that the powers exercisable under regs. 55, 55 AA and 55 AB shall be limited to a list of eight categories which includes (*inter alia*): the power to control the price of milk (55 AB) and foods distributed under the welfare foods services (55 and 55 AB), certain authorities for the sale of bread and milk in specified quantities (55) and the power to require information about and to control the prices of medical supplies required for the National Health Service (55 AA and 55 AB). Other regulations retained are the power to control the amount of credit which may be offered under hire-purchase and similar agreements (55) and to impose certain strategic controls over merchanting transactions (55), and also the power to control the production distribution and price of any commodity—if essential supplies from overseas should be interrupted (55 and 55 AB). Thirdly, cl. 2 provides that the current orders made under the regulations which are to remain in effect shall continue in force whether or not they could have been made under the powers amended by the Bill. The orders concerned include a number in relation to the control of goods and (*inter alia*) milk, welfare foods and bread.

Clause 3 continues certain powers of the Ministry of Supply and Board of Trade, but in a reduced and restricted form.

Clause 10 specifies that the powers renewed by the Act with one exception shall expire on December 31, 1964.

Social Security in New Zealand

New Zealand is often quoted as the pioneer in the establishment of social security schemes and it was in fact the first country in the British Empire to introduce old age pensions. Germany did so nine years previously but it is not always realized that even today much of the system of social security in New Zealand is based on a means test. It is pointed out in the report of the Social Security Department for the year ended March 31, 1958, that superannuation benefits were introduced in 1940 to provide a benefit eventually to be equivalent in rate to an age benefit, but without a means test, from the age of 65 years. The rate was first £10 a year to be increased by £2 10*s*. each year until it reached the level of the age benefit, then £78 a year. In 1951 the rate of superannuation benefit was increased to £75 a year with annual increments of £5 a year. Parity between superannuation and age benefit rates will not be reached until 1977. At the end of the year there were 83,577 people receiving superannuation benefit and 118,379 for whom superannuation was not adequate and were therefore receiving age benefit subject to a means test.

Under the British retirement pension scheme there is the opportunity to earn increments of pension if a person continues to work after pension age. There is no such arrangement in New Zealand, but there is a concession whereby any deduction from the basic benefit because of excess income or property may be diminished by £6 10*s*. for each complete year of deferment in the case of a beneficiary over the age of 65 years who has deferred claiming benefit between 60 and 65.

Other benefits are also subject to a means test but on a more generous scale than under the British National Assistance scheme. Some of the scales are also much higher than under the National Insurance scheme. For instance, a widow with one child may receive total benefits of £383 10*s*. a year, made up of the basic benefit of £214 10*s*. plus mother's allowance of £143 plus family benefit of £26 a year. In addition she may enjoy income of up to £104 a year from other sources. The rate of sickness benefit is normally reduced by the amount of a beneficiary's income in excess of 40*s*. a week.

There is no separately administered scheme of national assistance in New Zealand. In a case of hardship a special benefit may be granted at the discretion of the Social Security Commission to any person who is not qualified to receive any other cash benefit but who by reason of age, physical or mental disability, or for any other reason, is unable to earn a sufficient livelihood for himself and his dependants. Only 3,440 persons received help of this kind last year.

COMMONS DEBATE ON THE WOLFENDEN REPORT

By J. W. Murray, our Parliamentary Correspondent

The Secretary of State for the Home Department, Mr. R. A. Butler, opened the Commons debate on the Wolfenden Report on Homosexual Offences and Prostitution.

He said that those subjects raised in the most acute form one of the perennial dilemmas of organized society; *i.e.*, how far the law and the compulsion of the law should seek to regulate the behaviour of individuals. There was a sphere of conduct in which the behaviour of individuals had to be controlled by the sanctions of the law, in their own interests, in the interests of others, and in the interests of society at large. There was a sphere which it was proper to leave to the dictates of the individual conscience, as fortified by the teachings of religion and the generally accepted standards of the society in which we lived. Where dispute arose was in defining the limits of those two spheres.

The committee had stated that in its view the function of the law in regard to sexual behaviour was threefold; first, to preserve public order and decency; secondly, to protect the citizens from what was offensive and injurious; and, thirdly, to provide sufficient safeguards against exploitation and corruption.

He thought it would be agreed that the law should be so framed as to preserve public order and decency and to provide safeguards against exploitation and corruption, but it was the question of the protection of the citizen from what was offensive and injurious that created the greatest difficulty and about which they had to make up their minds.

The questions of homosexuality and prostitution had been with us in the world, in every nation, since the beginning of time and widely different views about homosexual conduct had been taken in different ages and in different societies. In this country the extreme form of homosexual conduct had been condemned by the criminal law for more than 400 years. That derived originally from the ecclesiastical law, but was now our statute law, and lesser forms arose, in particular, from the amendment moved by Labouchere, 70 years ago, which now formed s. 13 of the Sexual Offences Act, 1956.

The committee drew a sharp and valid distinction between sin and crime. Applying the definition of the function of the criminal law, the committee felt that while private homosexual conduct between consenting adults might be sin, and was commonly so regarded, it was not, or rather ought not, to be crime. The committee argued that to carry the criminal law beyond its proper sphere was to undermine the moral responsibility of the individual. The Archbishop of Canterbury, in the Lords, and the Church Assembly by a majority, had emphasized the vital importance of maintaining the fundamental right of a man to decide on his own moral code even to his own hurt. No one who had studied the report and the debate upon it in the Lords could fail to be impressed by the force of the argument that if conduct which was morally wrong was not injurious to society, then it ought to be left to the operation of the individual conscience. But that argument could be accepted as a reason for leaving homosexual conduct to the private conscience only if one were convinced that society would not be harmed by so doing. That was a proposition which many people, after giving full weight to the committee's arguments and to the views of the Churches, still found great difficulty in accepting.

Could they be certain that homosexual conduct between consenting adults was not a source of harm to others? A homosexual group might tend to draw in and corrupt those who were bisexual by nature and capable of living normal lives, but were led by curiosity, weakness, or, in some cases, purely mercenary motives, into homosexual society. While it might be argued that escape from such a group was easier if its activities were not illegal, it was equally arguable that resistance to its attraction was stronger in the first place if its activities were illegal as well as immoral. If they were drawing up a code for the first colonists of the moon, should they make that kind of offence a criminal offence? He was in some doubt whether they might or might not, but what they had to decide now was whether to remove the existing prohibitions with all the consequences of so doing.

An impression had undoubtedly gained ground, which he did not think was fair to the Wolfenden Committee, that they desired to legalize homosexual conduct. That gave a sort of impression that it wished to make it easier. In fact, what the members of the committee wished to do was to alter the law, not expressly to encourage or legalize such practices, but to remove them, like adultery and other sins, from the realm of law. In his opinion, education and time were needed to bring people along to understand that point of view. There was no doubt from the inquiries and researches he had made that many people would at present misunderstand the removal of the prohibition as implying, if not approval, at least condonation by the legislature of homosexual conduct. They had to reflect that many people who were outside the influence of religion found no other basis for their notions of right and wrong but in the criminal law. Could they be sure that if they removed the support of the criminal law from those people they would find any other support? At any rate, what was clear was that there were at present a very large section of the population who strongly repudiated homosexual conduct and whose moral sense would be offended by an alteration of the law which would seem to imply approval or tolerance of what they regarded as a great social evil. Therefore, the considerations he had indicated satisfied the Government that they would not be justified at present, on the basis of opinions expressed so far, in proposing legislation to carry out the recommendations of the committee.

He went on to say that prison sentences could make the position worse in some cases. His own personal experience of visits to prisons which had in them those who had committed that type of what was called crime showed how very unsuitable in many cases a prison sentence was for the redemption of a person of that sort. It was not necessary for him to go into details, but in some circumstances such treatment could hardly be regarded as more unsatisfactory.

Turning to the second part of the Wolfenden Report, dealing with prostitution, Mr. Butler said that there also, although the committee was concerned only with the law, they were bound to consider the social problem behind it and a great deal of thought had been given to the committee's findings. They were conscious of the gulf which separated what they wished to do and what they could achieve. Those who practised the art of government were often painfully aware that it was only the art of what was possible.

He thought that most M.P.'s would agree that prostitution was a trade which they would like our country to be without, but they would also agree with the committee that "until education and the moral sense of the community bring about a change of attitude to the fact of prostitution, the law by itself cannot do so." That did not mean that the law should make no contribution to the redemption of the individual prostitute. They might accept for the time, as other nations and civilizations had done right through history, the fact of prostitution, but each girl who became a prostitute, with all that entailed of eventual degradation and misery, was a reproach to our society.

The committee was in no doubt that nowadays prostitution was a way of life deliberately chosen because it suited a particular woman's personality and gave her both freedom from irksome routine and the means of earning much more than she would earn in regular employment. It was no longer a way of life which a woman adopted because no other was open to her, and the opportunities for rescuing women from it were consequently limited.

He was convinced that they had a duty, particularly with the young, to bring every means of redemption to bear before prostitution became a settled habit, and the law should, as far as possible, assist towards that end, although it could not itself achieve it. As the Wolfenden Committee said, they should take every legitimate chance of dissuading girls from adopting a life of prostitution by advice and help rather than by involving them in the machinery of the law. If they were warned at an early stage—and they had a lot to learn from the Scottish practice in that respect—and perhaps put in touch with one of the voluntary organizations which did such valuable work, they might turn back before they accepted prostitution as a settled way of life. If, despite the warnings and advice, a girl continued on that path and had to be brought before the courts, everything possible should be done at that stage to see that she received all the assistance which could be provided by the probation service and the other social services available. She should be given every encouragement and practical help to abandon the life before she became accustomed to it.

The committee believed that the function of the law in that field was to clean up the streets and to prevent exploitation. Its principal recommendation was that the law relating to street offences should be reformulated broadly in three ways—first, to eliminate the requirement to establish annoyance. It appeared to him that the Wolfenden Committee was perfectly right to say that in new legislation they should do away with any provision required to establish annoyance. He did not think that that would work from the point of view of the ordinary citizen, and he was quite certain that it would not continue to work from the point of view of the police. The next proposal that the committee made was that a maximum penalty should be increased, and a system of progressively higher penalties for repeated offences introduced; and the committee's third recommendation was that that should culminate in sentences of three months' imprisonment for the third, and for subsequent offences.

He had no doubt of the need to clean up our streets. He did not believe that it would, as was sometimes said, be hypocrisy, or simply keeping up appearances. He had been impressed by the shame that decent people felt at the state of the streets in the West End, in Paddington and in Stepney, to name only three areas, and by their fear for the well-being of young people who lived in, or passed through those streets. He did not believe that there was a single member of the House, who kept his eyes open, who could be in the slightest doubt that it was a reproach to our capital and a danger to our young people. Some people said that it would be possible to clear it up by a drive by the police. Of course, it was possible for the police to do something for a while. The police had been extremely effective in Stepney, and had appeared to clear up the situation there. But what he heard from the police was that a police drive could do no more than move on the trouble, but that it bobbed up elsewhere. He had studied it very carefully with the police authorities. Therefore, he did not think that a police drive, however estimable the police might have been in the handling of that very difficult problem, could be depended on alone.

The Wolfenden Committee had made out a very strong case for its recommendations, and he could now see the lines on which legislation giving effect to them would be framed. They had been preparing such legislation.

He had looked at the recommendations of the Wolfenden Committee in the hope of finding a way of improving on them, but, so far, he had not succeeded in doing so. It seemed to him that the essential thing in legislation was to find some means of reconciling the ethical, or moral, and the practical approach to the problem. For example, if they accepted the findings of the committee, many people would feel that it was inequitable that the woman should be punished and that the man should not. That was a point of view with which he had been, and still was predisposed to sympathize. Many people felt that both the substance and the language of the present law relating to street offences was archaic, harsh, and unjust to the woman.

If their object were to improve the present state of the streets, they could not blind themselves to the practical considerations. It was useless to create new offences, the law on which could not be enforced. It would be useless, and worse than useless, to redefine the law about soliciting in terms that would increase the difficulties of the police. In fact, if the law were not adequately defined the police simply could not administer it. They would thereby find themselves much further away from clearing the streets than they were now. At the same time, it was most important that the law should not be framed in terms that would expose an innocent woman to any danger of arrest for alleged loitering or soliciting. It was a very great danger. Therefore, when they came to frame a Bill any new definition of the offences had to satisfy two main points. First, it must not expose an innocent woman, who behaved indiscreetly, to arrest, and, secondly, it must not impose on the police an impossible burden of proof. For example, to protect the innocent woman it had to be an ingredient of the offence either that the woman was a known prostitute, or that she had solicited with a degree of persistence indicating a habit, or a way of life. If that provision were not made, it would be quite possible for an ordinary, innocent woman making a rendezvous with a man to be caught by the very law that they were designing to deal with prostitution. How could the demand for equality between men and women be satisfied? Of what offence, in fact, was the man to be guilty? He had read all the report and he had done his best to study the subject, and, with the possible exception of the kerb-crawler—a gentleman who was described therein who evidently drove about in a motor car for the purpose, who raised problems of his own—the man did not normally loiter, because he had no need to. He appeared once on the scene and was gone. In the rare cases where it was the man who persistently importuned women, he could be prosecuted under the existing law, namely, s. 32 of the Sexual Offences Act, 1956.

It was a fact that it was almost impossible for the authorities to identify the man, whereas it was comparatively easy for the authorities to identify the woman.

Referring to the committee's recommendations on living on immoral earnings, Mr. Butler said there was no doubt in his mind that the man who exploited a prostitute by living on her immoral earnings presented a different and, in some respects, an easier problem than the problem of what was known as the customer. The majority of the Wolfenden Committee considered that the existing maximum penalty of two years' imprisonment was adequate and they concluded their remarks on living on immoral earnings with these words, referring to all the evils of immoral earnings and those who exploited the girls: "With most of these evils the law attempts to deal so far as it can without unduly trespassing on the liberty of the individual; and, as in the case of prostitution itself, it is to educative measures rather than to amendments of the law that society must look for a remedy."

His own feeling was that if it were decided, as it might well be, to take action on those matters, the conclusions of the Wolfenden Committee majority on the question were not firm enough, and he had no doubt himself that they should accept the reservation by Mrs. Cohen, Mrs. Lovibond and Lady Stopford, who said: "We accordingly recommend that the maximum penalty for the offence of living on the earnings of prostitution be increased to five years' imprisonment." He had no doubt that after studying carefully the findings of the committee dealing with the law to which they referred, *i.e.*, the Sexual Offences Act, 1956, s. 30, which related to living on immoral earnings, they would be right to raise the penalty to five years.

Regarding premises used for prostitution, the committee recommended that a magistrates' court should be empowered, on convicting a tenant or occupier for certain offences, to make an order determining the tenancy or requiring the tenant to assign the tenancy of a person approved by the landlord. The committee based its recommendation on the existing provision for a "summary order for possession" made by the convicting court. But on most careful examination of all the legal advice at the disposal of the Government, they had come to the conclusion that the

existing procedure was defective because it over-rode the rights of innocent sub-tenants other than those protected by the Rent Restrictions Acts, and was rarely used. They had come to the conclusion that to devise new procedure would involve the most awkward and almost impossible dovetailing of the criminal law and the complicated civil law of real property. He warned the House that he did not at present see a way in which they could provide a reasonably speedy and effective remedy and yet not do harm to innocent sub-tenants. He thought that it would be a tragedy if any legislation which they envisaged to deal with prostitutes were to fall upon an innocent sub-tenant who happened to occupy a building which was alleged to be solely under the care of somebody to have prostitutes as sub-tenants in the building. He did not think at the moment the Government could accept that finding of the Wolfenden Committee.

(To be Continued)

THE HOUSING ACT, 1957, AND THE ISSUE OF CERTIFICATES OF DISREPAIR

[CONTRIBUTED]

Can a local authority, having satisfied itself that a house is unfit for human habitation and that it forms part of an area which can most satisfactorily be dealt with by demolition, or that it is unfit for human habitation and cannot at reasonable expense be rendered so fit, proceed to issue a certificate of disrepair, stating that they are satisfied that the individual defects listed by the tenant ought reasonably to be remedied, having regard to the age, character, and locality of the dwelling ?

This is a question which arises fairly frequently at the present time in cases where the landlord seeks, under the provisions of the Rent Act, 1957, to increase the rent of controlled property which is in a poor state of repair. It was raised in P.P. 4 at p. 309, *ante*.

If the landlord serves a notice of increase under s. 2 (2) of the Rent Act and the date specified in the notice expires before the declaration of a clearance area by the local authority or before the making of a demolition or closing order, there does not appear to be any reason why the notice should not take effect. The tenant on the other hand may be expected to serve form G on the landlord under para. 4 of part II of sch. 1 to the Act, and to make application to the local authority for the issue of a certificate of disrepair with a view to nullifying the effect of the landlord's notice.

The local authority, if they are already aware of the condition of the property, may also have firm views of their own as to how it should be dealt with. They may be proposing to include the house in a clearance area under s. 42 (1) of the Housing Act, 1957), on the grounds that it is unfit for human habitation and that " the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the area." Alternatively they may be about to make a demolition or closing order under ss. 16 and 17 of the Act, being " satisfied that the house is unfit for human habitation, and is not capable at a reasonable expense of being rendered so fit."

Time will often elapse before an occupier who is displaced as a result of the making of a clearance order under the Housing Act can be rehoused, especially if there have been objections to the order and the Minister has decided to hold a public local inquiry in the meantime. And even where a demolition or closing order has been made there may be delay before the order becomes " operative " within the meaning of s. 37 of the Act, particularly if the owner decides to appeal to the county court under s. 20.

It seems unreasonable that the tenant should be obliged to pay an increased rent in respect of a dwelling which has already been to all intents and purposes condemned. On the other hand it seems difficult for a local authority, which has already committed itself to the view that the best way of dealing with a house is either to demolish it completely or to close it, to issue a certificate of disrepair under part II of sch. 1 to the Rent Act, stating that the defects which have been specified in the tenant's notice (form G) " ought reasonably to be remedied, having regard to the age, character, and locality of the premises."

It is submitted, although with some hesitation, that a local authority could properly issue a certificate of disrepair in each of the above cases on the following grounds:

1. Two different statutes are involved and the local authority has to consider different questions under each statute. Thus:

(*a*) Under the Housing Act the local authority has to consider what is the best way of dealing with the house as a whole, whilst under the Rent Act it has merely to consider whether particular defects ought reasonably to be remedied. This is not necessarily the same thing, because a house might be unfit for human habitation by reason of defects of design or construction, which would have nothing at all to do with the question whether individual items were or were not in a proper state of repair.

(*b*) In considering whether to issue a certificate of disrepair the local authority are bound to have regard to " the age, character, and locality of the dwelling " but they do not appear to be under any obligation to take into account the expense of remedying the defects. Before making a demolition or closing order they must, however, under s. 16 of the Housing Act consider whether the house can be rendered fit " at a reasonable expense," and it is submitted that the cost of rendering houses fit for human habitation is one of the factors which ought properly to be taken into account by the local authority before an area is declared to be a clearance area under s. 42 of the Housing Act, since the authority must in such circumstances be satisfied that the " most satisfactory method " of dealing with the conditions in the area is by demolition.

2. In issuing a certificate of disrepair a local authority has to consider what defects ought " reasonably " to be remedied. If there is likely to be a substantial delay, either before the tenant can be rehoused in the case of a clearance area or before a demolition or closing order will become operative, this appears to be a consideration which could properly be taken into account.

On the other hand the landlord, on appeal to the county court in respect of the items included in the certificate of disrepair, might be expected to argue indignantly that the local authority ought not to be allowed to " blow hot and cold " at the same time, and that such thoroughgoing inconsistency is a privilege to which only politicians and women are entitled by custom !

UNWANTED WATERWAYS

The recently issued Report of the Committee of Inquiry into Inland Waterways under the chairmanship of Mr. Leslie Bowes makes interesting reading to those in any way concerned with canals and inland waterway systems. Speculation on the future of canals in this country must wait until Parliament has had an opportunity to consider the report, and has determined whether to implement some or all of its recommendations. But it can be said that at least two important points emerge from the report: (i) there is a definite future for certain canals as through merchandize carrier systems; and (ii) measures should be taken to redevelop or to eliminate other canals which have either ceased or are failing as commercially usable waterways. It is perhaps a pity that the report could not have been more definite in some of its proposals, and the fact that the Committee of Inquiry were unable to be unanimous on their recommendations for future ownership and administration of "the prescribed navigable system" and on procedure for redeveloping redundant waterways (and had to issue a "minority report" on alternative suggestions for these aspects) will undoubtedly make it more difficult for Parliament to make up its mind.

The first part of the Committee's terms of reference was "1. To consider and report on the future of the country's system of inland waterways and to make proposals for any measures necessary to achieve: (i) the maximum use of the system." As to this, the Committee (on the basis of selective treatment and without indiscriminate restoration) has listed 1,315 miles of navigable waterways vested on nationalization in the British Transport Commission and divided them into class A and class B waterways respectively. These two classes, referred to in the report as "the prescribed navigable system," are to be made (if the report is adopted) into an integrated and efficient system of inland navigation.

This article is concerned, however, not so much with navigable canals as with the report's recommendations for the future of the various inland waterways (comprising both nationalized and independent canals) excluded from the prescribed navigable system, as respects which the Committee were directed in the second part of their terms of reference to "make proposals for any measures necessary to achieve . . . (ii) the future administration of and financial arrangement for such inland waterways as cannot be maintained economically for transport purposes, having regard in particular to the requirements of public health and safety and to the facilities which these waterways can provide for purposes other than transport, such as recreation, water supply, land drainage, and disposal of effluents; and (iii) the conversion of canal sites to other purposes when this is considered desirable and practicable." Finally, the Committee were requested "to consider the present law relating to the closing of waterways to navigation and to make recommendations."

The report deals with the prospects of inland waterways and notes that, besides providing merchandise transport facilities, waterways can perform a number of other functions, some of which bring in almost as much money as do merchandise tolls. These functions (*vide* the terms of reference just quoted) include:

Water Supply and Abstraction. Water for canals is supplied from several sources, reservoirs, impounded streams and springs and feeder rivers, and over the years much of the water which comes into the canals is in turn abstracted in order to supply adjoining premises under arrangements made with the canal owners. In other cases, the private canal Acts may authorize riparian farmers to take water for watering stock, and water is also abstracted for crop irrigation. (The receipts from the sale of water from the British Transport Commission's inland waterways system as a whole in 1957 reached £432,224.) The demands of industry for water continue to increase, and it should not be overlooked that in some areas canal water is used by fire brigades for fire-fighting purposes.

Land drainage. Some waterways are included in the main river of water boards and play an essential part in securing the efficient drainage of the boards' areas.

Reception of Effluents and Surface Water. Many canals serve an important rôle as channels for receiving effluents and surface water from adjoining property, although canal proprietors derive little revenue from this.

Recreational Uses. Besides being available for commercial traffic, canals serve the needs of pleasure craft and often provide facilities for fishing (mainly coarse), particularly near towns. Towpaths are used as local walks and canals can provide recreational and amenity needs such as sailing, rowing, nature study.

In the course of reviewing the problem of uneconomic waterways, the report refers to the many miles of existing waterways, commercially unprofitable and in varying stages of neglect. Some are little used for navigation and others are disused, de-watered, and physically incapable of navigation for many years past. Many have been legally closed to navigation, but with short sections open to traffic. Their legal ownership or management is often in doubt or vested in bodies incapable or unlikely to use them as waterways. Elsewhere, the report speaks eloquently of the physical effects of abandonment: "Disuse by navigation is often followed by an appearance of neglect and decay. Unless there is sufficient rate of flow, water in the pounds, unmoved by the passage of vessels and the filling and emptying of locks, stagnates, and weeds grow fast, their roots hastening the formation of silt beds which progressively encroach upon the channel. Structures suffer much wanton damage, and in populous areas disused waterways tend to be used as dumps for every kind of refuse. The superficial signs of disuse do not necessarily mean that the waterway is unnavigable; the presence of weed on the surface, overgrown towpaths, leaking lock gates, rotting hulks of sunken craft, deserted premises and the absence of traffic can make a waterway appear more decayed than it really is. A derelict waterway in rural surroundings may be inoffensive and even picturesque; but in an urban area, and particularly an industrial area, it is dismal, offensive and sometimes dangerous."

The report goes on to outline a number of methods by which owners of unwanted inland waterways which are disused for navigation or derelict have dealt with them, *viz*:

1. Abandonment by warrant and order under s. 45 of the Railway and Canal Act, 1888 (as amended by s. 37 of the Transport Act, 1947, in relation to waterways vested in the British Transport Commission). Under s. 45 canal companies may apply to the Minister of Transport and Civil

Aviation for a warrant authorizing the abandonment of a canal unnecessary for purposes of public navigation. Local authorities or land owners adjoining a derelict canal may also apply to the Minister for a warrant where the canal (i) has been disused for three years, or (ii) the owners have let the canal become unnavigable or injurious to adjoining land and cannot or will not repair it. Following the issue and publication of the warrant, the Minister may make an order releasing the canal owners from their liabilities to maintain the canal and their obligations in respect of it or of its abandonment. This archaic and cumbersome procedure is rarely resorted to in practice and is full of defects, some of which are mentioned in appendix J to the report.

2. Transfer of a navigation or conservancy authority to river boards under s. 40 of the Land Drainage Act, 1930, and s. 8 of the River Boards Act, 1948, or variation of navigation rights where a navigation authority is not exercising its powers under s. 41 of the Act of 1930. These provisions can only be employed for the improvement of land drainage and river boards have proved reluctant to use them. Although the Heneage Report (*i.e.*, the Report of the Land Drainage Sub-Committee of the Central Advisory Water Committee published in 1950) contained several proposals (both procedural and financial) for improving the machinery enabling river boards to take over disused canals, the Government has not seen fit to implement the recommendations of that report.

3. Abandonment by private Bill procedure. This is expensive and takes time, and Parliament has indicated that the future of canals generally should be dealt with by public legislation.

4. Physical abandonment of a canal by the owners without any legal procedure. The disadvantages of pure neglect have already been considered.

The report considers that a new and more effective procedure is badly needed for dealing with inland waters which are regarded as being incapable of being maintained economically for transport purposes and recommends two methods:

Re-development, which means keeping the waterway "in being as a water channel, adapted to serve primarily purposes other than commercial navigation (the latter being, however, not necessarily excluded); and that responsibility for its maintenance and management is entrusted to some entity, not necessarily the existing owners, suited to the proper exercise of those responsibilities."

Elimination in cases where a waterway has physically ceased to exist as such, because its navigation works and the rights and obligations of the original owners in relation to the waterway have been either extinguished or transferred to other ownership. Elimination in this sense means some positive action, and not merely abandonment of the waterway by time and neglect.

The report then proposes the establishment of a new and independent body, referred to as the Waterways Redevelopment Board, consisting of a chairman with five members to be appointed by the Minister of Transport and Civil Aviation after consultation with interests representative of commerce, finance, agriculture, land drainage, local government, water supply, etc. In broad terms, the main functions of the new board would be "to undertake the preparation of practicable and desirable schemes for re-development (with or without transfer) or elimination [of unwanted waterways, *i.e.*, those which have become obsolete or unprofitable], or at their discretion, to secure that such schemes are prepared by the waterway owners or other interested parties; to consult all interests affected by such schemes and conduct any necessary negotiations; to initiate the procedural steps for giving effect to schemes; and to exercise certain reserve powers of enforcement."

Next follows in some detail the machinery and procedure required to undertake the performance of the functions of the new Board, and it is not necessary to repeat these here. But certain aspects deserve mention, *viz.*:

(i) In preparing schemes whether for re-development or elimination, every length of waterway must be considered as a whole, but different treatment may be applied to different sections; one part might be eliminated, another transferred and a third retained. Thus, navigation might be preserved or restricted on one or more sections.

(ii) The Board should ascertain whether a waterway can be transferred to some body or person. River boards may be concerned in waterways from the land drainage function; water undertakings might be interested in a canal or its associated reservoirs; local authorities might want to use the site of eliminated canals, or the amenity value of a length of existing canal might appeal to them; an association of individuals might wish to use a section of waterway for sailing, boating, or fishing.

(iii) Government policy should be directed to ensure that government departments assist in appropriate cases with grant aid, *e.g.*, a waterway transferred to a river board should attract a grant towards the capital cost of incorporating the waterway in the drainage system. In particular, all bridges carrying publicly maintained highways over a re-developed waterway should be vested in the highway authority.

(iv) Where re-development or elimination proposals interfere with existing rights, such as navigation, abstraction, drainage, discharge of effluents, or fishing, alternative facilities should be provided or compensation should be payable.

(v) Schemes for nationalized waterways not included in the prescribed navigable system should be undertaken by the British Transport Commission applying to the Minister for a review, but other interested parties, such as local and public authorities and adjoining owners, could ask the Minister to make an order referring a waterway to the Board for review. Similarly, the owners of an independent waterway or locally interested parties could apply to the Minister for an order to place the waterway under review.

(vi) If a waterway is to be eliminated or transferred, its owners should be required to contribute towards the scheme in kind, since they will be relieved of certain liabilities. Thus they should dismantle locks and make them safe, provide means for maintaining the flow of water where necessary and hand over the waterway in a safe condition. If part of a canal is to be de-watered, the owners should do this and put the waterway into a proper state, so that the transferee has merely to level the dry channel before adapting the site to his purposes. Any compensation payable in respect of interference or extinguishment of rights should be paid by the owners.

(vii) The British Transport Commission should be required to ensure that nationalized waterways not included in the prescribed navigable system, pending the operation of schemes for their re-development or elimination, do not deteriorate and do not become dangerous, insanitary or a nuisance, and that existing rights and facilities exercised or enjoyed on a prescribed date are preserved, subject to the Commission's obtaining financial relief towards the cost of maintaining such waterways. After re-development, nationalized canals (unless transferred) should remain vested in the

Commission, but the existing Waterways Sub-Commission, which assists the Commission, should be reconstituted.

There are many other notable and important recommendations in the report, which deserve mention but cannot be suitably included in a short article. It remains for Parliament to take action on the findings of the Committee of Inquiry, but, judging from the fate of some reports of previous Select and Departmental Committees and Royal Commissions on the same or similar topics, one should not be too sanguine.

A.S.W.

TO AND FRO

Sections 23 and 24 of the Town and Country Planning Act, 1947, are based partly on the principle that there must be some end to litigation. It is therefore not open to a person against whom enforcement proceedings have been started to raise before the magistrates any and every argument which might be produced. Section 24 says that in defence to a prosecution he may not raise matters which could have been raised by appeal to the magistrates under s. 23. Section 23 (4) sets out four matters which he can raise by appeal to the magistrates against an enforcement notice, and the subsection does not mention amongst them an averment by him that there has not been development at all—although he is expressly authorized by the subsection to argue that the development, if such it was, did not need permission from the planning authority. As we pointed out at p. 533 *ante*, this is the effect of the majority decision in *Eastbourne Corporation* v. *Fortes Ice Cream Parlour Ltd.* (1958) 122 J.P. 324; [1958] 2 All E.R. 276. In our article just cited we threw out a doubt upon the question whether the decision in *Francis* v. *Yiewsley and West Drayton U.D.C.* (1958) 122 J.P 31; [1957] 2 All E.R. 529, overruling *Perrins* v. *Perrins* (1951) 115 J.P. 346; [1951] 1 All E.R. 1075, was necessarily binding upon the Divisional Court. In the *Eastbourne* case, however, the Divisional Court by a majority said in terms that its own decision in *Perrins* v. *Perrins* had been overruled by the Court of Appeal, with the result that *Norris* v. *Edmonton Corporation* (1957) 121 J.P. 213; [1957] 2 All E.R. 801, which followed *Perrins* v. *Perrins*, was also to be treated as no longer good law.

Unhappily, changes of the judicial mind do not end there. In *Norris* v. *Edmonton Corporation*, *supra*, the Divisional Court had said that the decision in *Keats* v. *London County Council* (1954) 118 J.P. 548; [1954] 3 All E.R. 303 was no longer to be regarded as binding, because it was inconsistent with the reasoning of the House of Lords in *East Riding County Council* v. *Park Estate* (*Bridlington*), *Ltd.* (1956) 120 J.P. 380; [1956] 2 All E.R. 669. The majority of the Divisional Court have now, in *Eastbourne Corporation* v. *Fortes, Ltd.*, *supra*, discovered that the earlier Divisional Court which heard *Norris* v. *Edmonton Corporation* was wrong in what it said there about inconsistency between *East Riding County Council* v. *Park Estate* (*Bridlington*) *Ltd.* and *Keats* v. *London County Council*. The only passage in all the speeches in the House of Lords which is (they now say) inconsistent with *Keats* v. *London County Council* is a part of one sentence used by Lord Evershed by way of illustration, a sentence not strictly relevant to the decision of the House, There is thus a further reason for treating *Norris* v. *Edmonton Corporation* as erroneous, and it follows that *Keats* v. *London County Council*, *supra*, is reinstated. The effect of that case is that in proceedings under s. 23 (4) of the Act of 1947 the magistrates have no jurisdiction to decide whether there has been development within the meaning of the Act. Although this decision on the face of the subsection agrees with what it says, the result is that the primary allegation (that there has been development) cannot be challenged by appeal to the magistrates by the person affected, at the stage when such a challenge would be most valuable to him. He may, however, challenge the result of the enforcement notice upon this fundamental point when the stage is reached of prosecution under s. 24 (3) of the Act, or (as the case may be) of recovery by the planning authority under s. 24 (1) of expenses incurred in doing work which the person affected has not done: *cp. Mead* v. *Plumtree* (1952) 116 J.P. 589; [1952] 2 All E.R. 723, and our answer to P.P. 10 at 116 J.P.N. 816, published on the same day as our report of that case. This was pointed out by Donovan, J., in the penultimate paragraph of his judgment in *Eastbourne Corporation* v. *Fortes, Ltd.*, *supra*, where he mentioned that a declaratory judgment, as in *Francis* v. *Yiewsley and West Drayton U.D.C.*, *supra*, might also be available in suitable cases.

As he said, these things are better than nothing. In the same case Lord Goddard, differing from the majority of the Divisional Court, thought himself still bound by *East Riding County Council* v. *Park Estate* (*Bridlington*), *supra*, to hold that *Keats* v. *London County Council*, *supra*, had been decided wrongly, and that the magistrates had jurisdiction on an appeal to them under s. 23 (4) to consider whether there had been development. All members of the Court agreed that much of the doubt arising in these cases sprang from the proviso to s. 17 (2) of the Act of 1947, which had not been considered by the Court in *Keats* v. *London County Council*, an enactment said to be inconsistent with s. 23 (4) of the Act.

Whether these divagations are to be blamed upon Parliament for carelessly saying too much in the proviso to s. 17, or upon over-refinement of decision by the courts themselves, or upon the malignity of Fate, it remains true that the cost of trying to solve the puzzles has fallen upon unfortunate litigants and the equally unfortunate ratepayers of areas where cases have arisen. As Lord Goddard said in *Eastbourne Corporation* v. *Fortes, Ltd.*: "It is probable that the last word has not yet been spoken on these sections." It is high time for that word to be spoken, and, in the light of events in the last few years, it seems high time for Parliament itself to say it: it would be a good thing if the Town and Country Planning Bill now before the House of Commons were extended, by a short amendment altering s. 17 of the Act of 1947 or otherwise clearing up these doubts. The practising lawyer is always inclined to be suspicious of enactments limiting the matters which can be raised before the courts, and Lord Goddard's judgment reflected this suspicion.

But such limitations are not always or perhaps even usually contrary to the interests of the private person. The possibility of recourse to litigation with appeal after appeal favours the long purse.

WORKING BALANCES

Local authorities have wide powers in the provision of working balances and they exercise the discretion vested in them in remarkable variation.

The statutory authority rests in s. 12 (1) of the Rating and Valuation Act, 1925, and in s. 215 (1) (*a*) of the Local Government Act, 1933. The 1925 Act provides that a local authority shall make rates or issue precepts sufficient to defray, *inter alia*, "any expenditure which may fall to be defrayed before the date on which the moneys to be received in respect of the next subsequent rate or precept will become available." The 1933 Act empowers a local authority, without the consent of any sanctioning authority, to borrow by way of temporary loan or overdraft from a bank or otherwise, any sums which they may temporarily require for the purpose of defraying expenses (including the payment of sums due by them to meet the expenses of other authorities) pending the receipt of revenues receivable by them in respect of the period of account in which those expenses are chargeable and taken into account in the estimates made by the local authority for that period.

Section 215 is not much used, possibly because of the power and duty of the district auditor set out in s. 228 of the same Act to surcharge the amount of any loss or deficiency upon the person responsible, a charge for interest or any loss of interest arising from failure through wilful neglect or default to make or collect rates or issue precepts sufficient to cover the expenditure of the authority for any financial year being defined as a loss within the meaning of the section.

The discretion resting with the local authorities was underlined in the well-known case of *Morgan* v. *Cardiff Rating Authority* (1933) where the city recorder (R. Vaughan Williams, K.C.) said, *inter alia*, "The working balances came into existence apparently as a result of retaining surpluses arising from time to time from the excess of income derived from rates over expenditure. It has not been contended that there is anything wrong either in having working balances or in the way in which they have come into existence. What is done as to the maintenance of a working balance and the alteration of its amount must, therefore, be a matter for the rating authority to decide and a matter on which, as long as it acts in good faith, its opinion must be decisive." But the recorder went on to say "The rating authority is not entitled to form a fund for equalizing rates . . . and if it were proved that the surplus in question was dealt with and the rate in question made in order to carry out such a scheme the whole rate could be quashed."

In fact it appears that many authorities do in fact utilize their balances in part as unofficial rate equalization funds.

It is difficult, if not impossible to determine precisely what the amount of a working balance should be, as the amount required depends upon many varied factors. Some of these we discuss here.

In the first place it is clear that any of the arbitrary methods of calculation sometimes applied in the past are unlikely to be satisfactory, if a figure approximating to accuracy and necessity is the aim. Calculations of a percentage of total annual expenditure on revenue account, of a fixed sum per head of population or of the proceeds of a specified rate poundage will not unusually produce sensible figures.

The amount of the balances tied up in stocks and stores and plant is an important factor, and so are the amounts of outstanding debtors and creditors, but here the date (or, more accurately, dates) of the calculation is important, as it is easy if these figures are used as guides to provide for a great part of the year a balance much too large for its ostensible purpose.

In considering the right size of balances it is difficult to compare one authority with another, even an authority of the same class. One county may receive its precept instalments at different dates from another; one urban district may for various reasons collect its rates at quite a different pace from another. The proportions of expenditure falling upon rates and upon grants vary greatly between one authority and another: these differences will be accentuated from April 1, 1959, onwards when rate deficiency grants become payable direct to county districts.

In comparing figures from estimates and published accounts it must be remembered also that the figures shown for revenue balances include something more than a pure working balance. For example, in counties windfalls in the shape of underestimated rate products by county districts, underestimated equalization grant figures, and estimate underspendings, plus the accumulated surpluses of earlier years, often account for a large part of the balance shown. Add to these complications the different views of different treasurers, finance committees and councils about such points as the extent to which, if at all, it is advisable to go into overdraft during the year and it is apparent that if nothing more were involved than an honest attempt to arrive at a truly required working balance the results would differ widely.

But we do not think the answers would in fact differ as widely as they do. Something more is involved, namely, the use of balances as rate equalization funds and as general reserves. That balances held by a selection of counties should vary from 12 to three *per cent.* of gross expenditure is surprising enough but that balances held by a sample of rural districts should vary from 80 *per cent.* to 16 *per cent.* of gross general rate fund expenditure is only explicable on the grounds we have mentioned.

In certain of the cases we have seen it would not take a district auditor long, if he felt drawn to investigate the matter, to show conclusively that balances held were greatly in excess of any normal and foreseeable requirements of the authority. That is one risk which the unnecessary hoard carries with it.

Another relates to the future, and here we may look to the past for a lesson. Blitzed authorities will need no reminding that Government financial assistance was only given after their own balances had been exhausted: local ratepayers paid less in those areas where councils had not maintained large balances. A re-organization of local government is in prospect and mergers of areas may well mean, unless excessive balances now held are reduced, the diversion of saved money into other pockets than those from whence it came.

On all grounds therefore, it seems to us that the budget, rate and precept making season now about to open should be the occasion for a serious review and reduction of excessive accumulations.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Parker, C.J., Cassels and Diplock, JJ.)

R. *v.* AYU

November 17, 1958

Criminal Law—Sentence—Incorrigible rogue—Twelve months' imprisonment and order under the Justice of the Peace Act, 1361, binding defendant over to go to Nigeria—Validity of order.

APPEAL against sentence.

The appellant was convicted at Brighton magistrates' court of being found in a dwelling-house for an unlawful purpose and was committed to quarter sessions for sentence as an incorrigible rogue. He was sentenced by the recorder to 12 months' imprisonment, and an order was made that at the end of that term he be bound over in his own recognizance in the sum of £10 to accompany an escort to train and ship or aeroplane by which he would be sent to Nigeria and that he should not land again in this country for a period of five years. In default of entering into such a recognizance it was ordered that he be imprisoned for a further term of six months.

Held: that, though an order binding over an offender to come up for judgment when called upon in lieu of sentence could lawfully include a condition requiring the offender to leave this country and not to return for a specified period; such a condition could not be included in an order of binding over to keep the peace made under the Justice of the Peace Act, 1361; in the present case there was no power to make the first kind of order; and, the order made by the recorder being one which could not lawfully be made, that order must be quashed, leaving the sentence of imprisonment to stand.

Counsel: *M. D. L. Worsley*, for the appellant; *Pensotti*, for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; Town Clerk*, Brighton.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Lord Merriman, P., and Hewson, J.)

LILLEY *v.* LILLEY

October 6, 7, 8, 9, 10, 29, 1958

Husband and Wife—Maintenance—Wilful neglect to maintain—No matrimonial misconduct by husband—Wife suffering from neurosis and incapable of resuming cohabitation—Liability of husband.

APPEAL from justices.

The parties were married in 1948 and in 1952 a child was born. The birth of the child caused a gravely aggravated mental or nervous disorder in the wife which developed into an invincible repugnance to sexual intercourse with the husband. The parties separated, and on October 12, 1954, a magistrates' court found the husband guilty of desertion and made a maintenance order in the wife's favour under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. Thereafter the husband wrote to the wife letters which were found to contain a genuine offer to resume cohabitation which the wife refused to accept and on August 23, 1957, the magistrates' court discharged the order. The husband continued to pay maintenance voluntarily for a short time, but then ceased to do so and the wife made a complaint to the same magistrates' court alleging that the husband had wilfully neglected to provide reasonable maintenance for her. Medical evidence showed that the wife suffered from a neurosis which produced an acute revulsion to any physical contact with the husband and that if she returned to him there would be a serious breakdown in her health. The wife did not allege that the husband was guilty of any matrimonial misconduct, but contended that he was liable to maintain her at common law and that his deliberate refusal to do so amounted to wilful neglect. The husband contended that he was under no liability to maintain the wife since (i) he was guilty of no matrimonial misconduct and (ii) she was in desertion.

Held: the wife was not entitled to maintenance since, although she was not in desertion, she being incapable of resuming cohabitation, her justification for refusing to cohabit with the husband involved no matter of complaint against him, and, therefore, there was no element of misconduct on his part to support a charge of wilful neglect to provide reasonable maintenance.

Per Curiam. It might be that the answer lay in the National Assistance Act, 1948, ss. 42, 43, under which the National Assistance Board had an independent right against the husband. An order under s. 43 (5) (*b*) that the husband should maintain the wife could be made by virtue of his express liability to maintain her under s. 42 and would not necessarily impute a finding of wilful neglect.

Counsel: *R. H. Hutchinson*, for the wife; *McHale* for the husband.

Solicitors: *Dawson, Loncaster & Co.*, Hull (for the wife); *Smith & Hudson*, agents for *Williamson, Stephenson & Hepton*, Hull (for the husband).

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Taxation Manual. Ninth edn. Taxation Publishing Company. Price 25*s.* net., 26*s.* 6*d.* post free.

Rayden on Divorce. Seventh edn. supplement. Butterworth & Co. (Publishers) Ltd. Price 12*s.* 6*d.*, combined price £6 5*s.*

A Guide to Land Registry Practice. Eighth edn. John J. Wontner. Solicitors' Law Stationery Society, Ltd. Price 23*s.* 6*d.*

Swift's Sanitary Officers' Practice. Environmental Hygiene. Stewart Swift. Butterworth & Co. (Publishers) Ltd. Price 85*s.* net, postage 2*s.*

Cases on Criminal Law. J. W. C. Turner and A. L. L. Armitage. Second edn. Cambridge University Press. Price 60*s.* net.

Tax Cases. Vol. 37. Part 10. H.M.S.O. Price 3*s.* net.

Notes on District Registry Practice and Procedure. Thomas S. Humphreys. Eleventh edn. Solicitors' Law Stationery Society, Ltd. Price 15*s.* net.

MISCELLANEOUS INFORMATION

HOUSING AND FAMILY WELFARE—PROBLEM FAMILIES

[The following is the paper that Mr. C. Price, O.B.E., clerk to the Belper U.D.C., and Mr. David R. Perry, clerk to the Ripley (Derbyshire) U.D.C., jointly delivered to the Derbyshire Urban District Council's Association. *See* Note of the Week at p. 795, *ante*.]

The powers of local authorities to provide houses are contained in the Housing Act, 1957, and need no special mention.

The powers of county councils to provide accommodation for certain classes of persons are contained in the National Assistance Act, 1948, and also the Children Act, 1948. These two Acts followed the repeal of the old poor law code.

It is clear that there should be a close association between district councils as housing authorities and county councils as welfare authorities. This is particularly so in relation to difficult or problem families with children living in local authority houses. The emphasis now being given to slum clearance and automatic rehousing of families, many of which are in the lower income groups, increases the scope for welfare problems, arrears of rent, eviction cases and unsatisfactory tenants.

The National Assistance Act, 1948, s. 21, lays on county councils the duty to provide:

(*a*) *residential accommodation* for persons who by reason of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them;

(*b*) *temporary accommodation* for persons who are in urgent need thereof, being need arising in circumstances which could not reasonably have been foreseen or in such other circumstances as the authority may in any particular case determine.

Provision under the above powers is generally referred to as "Part III Accommodation" and the county council is under a duty to make charges for the accommodation. The arrangements must be embodied in a scheme to be submitted to and approved by the Minister.

Section 26 of the Act permits the county council, in lieu or in supplementation of the provision of accommodation under their own management or by another part III local authority, to make arrangements with any voluntary organization for the provision of accommodation. It is perhaps important to note in this respect that the Act does not apparently provide for such arrangements to be made with county district councils.

Under the Children Act, 1948, s. 13, the duty is placed on county councils to provide for orphans, deserted children or other children in need of care. This may be done by providing homes or by boarding-out. The accommodation or houses provided under the National Assistance Act, 1948, may be used to a certain extent for such children.

The cost of keeping an adult person in temporary accommodation varies considerably but can be taken as in excess of about £4 per week. The cost of keeping a child in a children's home is in excess of £6 per week. This financial burden has caused the Ministry to take the view that the provision of accommodation for unsatisfactory families while the work of rehabilitation is carried out can best be made by housing authorities, thus relieving pressure on the much more expensive part III accommodation. In 1950 the Ministry stated that the primary responsibility for the housing of evicted families rested with housing authorities. This view was disputed by local authority associations and an agreed statement was issued by all such associations, following a conference in July, 1950, to the effect that welfare and housing authorities should confer and agree arrangements. It would seem that the new legislation of 1948 had abolished the old Poor Law workhouses without providing anything to replace them other than the limited provision of temporary accommodation mentioned above.

In 1951 discussions took place between the Derbyshire county council (welfare authority) and the county district councils (housing authorities) but no concrete arrangements resulted except "It was agreed that there should be the fullest co-operation between the district councils as housing authorities on the one hand, and the county council as the welfare authority on the other, to ensure that these families were not left without some kind of home." In consequence, housing authorities have been left to deal with families evicted from private houses and with their own unsatisfactory tenants largely in such way as each authority thinks fit. So far as concerns tenants of local authority houses who are evicted they have either to find their own accommodation or to go to the part III accommodation if room is available.

We feel that suggestions on the following points are worthy of consideration:

1. In nearly all cases of eviction from council houses the cause is arrears of rent. The amount of arrears is small compared with the cost of part III accommodation, which could amount to £20 per week for a mother and three children. If the housing authority is prepared to withhold eviction for an agreed period to enable the welfare authority to try to effect rehabilitation then there is a case for some arrangements for distributing the financial burden between the housing and welfare authorities. In this and in the case of other suggestions below the powers of s. 126 of the Local Government Act, 1948, are available to the county council to make contributions to district councils.

2. In certain cases within broadly defined lines the welfare authority might in effect "adopt" for a period as their part III accommodation, the house in which the problem family lives and pay rent direct to the housing authority. Under this arrangement the welfare authority would incur rent of say £1 10*s*. per week instead of £20 per week.

3. Where the housing authority house or rehouse a family by arrangement with the welfare authority either from part III accommodation or elsewhere a financial contribution be made by the welfare authority to the housing authority in respect of any rent arrears accruing over an agreed period.

4. The welfare authority to consider a scheme of practical help to existing tenants of council houses in agreed cases by some form of specialized home help service to cultivate a sense of responsibility and good standard of household management.

In conclusion, the authors say they wish to make it clear that in submitting this memorandum it should not be assumed that problem families abound (or even exist) in their respective districts.

THE TOWN CLERK'S QUALIFICATIONS

The current issue of *Public Administration* contains a number of interesting facts about the qualifications of town clerks, based on replies by 377 of the 431 town clerks in England and Wales to a questionnaire circulated by Mr. T. Headrick with the help of the Society of Town Clerks.

The great majority of town clerks (82·8 *per cent.*) are solicitors; some are accountants (four *per cent.*), a few are barristers (1·6 *per cent.*), and a substantial number possess a secretarial or similar qualification (11·6 *per cent.*).

Just over half of the number of solicitor town clerks (57 *per cent.*) served articles to a full-time town clerk, 34 *per cent.* served articles to a private solicitor, five *per cent.* to a part-time local government officer, and four *per cent.* had a divided articled clerkship between local government and private practice.

Approximately 35 *per cent.* of the town clerks have university degrees and all but about one *per cent.* of these are solicitors. The overwhelming majority of town clerks have taken a law degree of one kind or another. Of those possessing law degrees 48 *per cent.* have LL.B.

ROAD CASUALTIES — SEPTEMBER, 1958

There were 502 deaths on the roads of Great Britain in September compared with 490 in September, 1957. The seriously injured numbered 6,042, an increase of 341; and the slightly injured, 20,089, an increase of 1,656. The total for the month of 26,633 is 2,009 more than in the previous September. Traffic on the main roads during the same period increased by 12 *per cent.*, according to Road Research Laboratory estimates.

Casualties to children showed increase. Seventy-two children were killed, 45 while on foot and 15 while riding bicycles. This is 22 more than in September of last year. The total number of casualties to children rose by 1,204 to 4,963; the increase to some extent reflects the fact that child casualties in September, 1957, were exceptionally low.

During the first nine months of this year deaths in road accidents numbered 4,149. The seriously injured numbered 49,868 and the slightly injured 165,043, making a total for all casualties of 219,060. The total is 17,789 more than in the same period of 1957.

ANNUAL REPORTS, ETC.

REPORT OF THE CLERK TO JUSTICES FOR NOTTINGHAM

The annual report to the justices made by Mr. George D. Yandell, clerk to the justices for the city of Nottingham, contains the usual statistics relating to the work of the magistrates' court, the juvenile court and the probation committee and also some interesting observations.

There is a useful summary of the principal provisions of the Maintenance Orders Act, 1958, and attention is called to the First Offenders Act, 1958.

Magistrates and clerks sometimes ask one another how the new procedure of the Magistrates' Courts Act, 1957, is working in various areas. In Nottingham it is evidently giving good results. Mr. Yandell says the procedure has worked smoothly and has meant that many hundreds of hours of police officers' time have been saved for duties other than court attendance. The release of these police officers plus the continued increase in the volume of traffic in the city streets has inevitably increased the number of road traffic prosecutions for the current year which had by October exceeded by 1,000 the total figure for 1957.

There is a word of praise for the school children of Nottingham. Mr. Yandell writes: "There have been several cases in the past year in the Nottingham courts in which school children have been complimented by the magistrates for the part they have played in bringing offenders to justice. So much has been said about the increase in crime among the rising generation that it is good to hear of these young people imbued already with a sense of their duty to the community, an example which might be followed in many instances by their elders."

CHESHIRE CHILDREN'S OFFICER'S REPORT

The report of Miss M. Brooke Willis, children's officer to the Cheshire county council, for the year ended March 31, shows the continued increase in the number of children in care. The figure being 805, compared with 782 and 776 in the two previous years. The number of applications has also increased successively. The percentage of applications resulting in children being received into care was 56. The commonest causes for children having been received were short-term illness of parent or guardian and the confinement of the mother.

Boarding-out, where really interested and suitable foster parents can be found, is generally regarded as far the best method of dealing with children kept in care for any length of time. It has the additional advantage that the cost to public funds is only a fraction of the cost of institutional treatment. It is satisfactory to read that in Cheshire the boarding-out total represents 73·6 *per cent.*, an increase on the previous year's percentage of 72·5. Only 20 of the 279 children placed in the year had to be removed during that period (seven *per cent.* of the total placements as compared with nine *per cent.* in the previous year).

The result of showing a film on television as a means of advertizing the need for foster parents was disappointing, but other methods were more-successful and in all there were 250 offers of help during the year, compared with 224 the previous year.

DERBYSHIRE CONSTABULARY: CHIEF CONSTABLE'S REPORT FOR 1957

Vacancies at the end of the year were 140, compared with 165 a year before. The authorized strength is 839, so that the force is more than 16 *per cent.* below strength. The cadet force has no difficulty in recruiting suitable young men to maintain its strength (50) and there are now 53 former cadets serving in the regular force.

In his foreword the chief constable expresses regret at having to report the greatest number of crimes ever recorded in the county. The total was 6,026, compared with 5,070 in 1956 and 2,431 in 1938. Sexual offences increased from 393 in 1956 to 656 in 1957. Two thousand and fifty-one of the 4,201 detected crimes were committed by juveniles. Another class of crime which showed a great increase in 1957 was "frauds other than false pretences" which jumped from 118 in 1956 to 333 in 1957. In 1938 and 1939 these numbered 46 and 34 respectively.

Non-indictable offences did not show any great increase, their total being 12,113 compared with 11,867 in 1956. There were 9,933 prosecutions and 2,180 cautions. There were 66 prosecutions for "drunk-in-charge" leading to 48 convictions, 13 dismissals, three committals for trial and the remaining two adjourned *sine die*.

During the year escorts were provided for 412 of the 3,981 abnormal indivisible loads notified to the police. They made heavy demands on police time and vehicles which the force could ill afford. It is pointed out that these loads cause frustration to other road users and that to ensure safety police escort (sometimes as many as three cars) must be provided, often for lengthy periods. "*This service is free to the hauliers.*"

WEST SUSSEX PROBATION REPORT

The figures for the year ended October 31, last, show a further substantial increase as compared with the previous year. The report tells us that an additional officer has joined the staff, but, as in so many other areas, the work still tends to outstrip the establishment—and the accommodation.

It must be remembered that the yard-stick of case-loads, though dearly loved by the statistician, is a wholly inadequate register of the true volume of probation work. We are reminded in this report of of the ever-increasing pressure of extra-court social inquiries, some of which lead to voluntary cases, while others produce nothing but expenditure of time—and the probation officer's satisfaction in having been of some personal value to a soul in trouble. It seems inevitable that as the public become more aware of the nature and quality of probation officer's work, they will tend to regard the local probation office as a kind of citizen's advice bureau, run by specialists in human relations.

Sooner or later this tendency will have to receive some official acknowledgment in terms of staff and accommodation. Already the probation service is branching out into fields scarcely envisaged by the founders of the service, and there will be no stopping the process. Nor should there be, for it is clear that a long-felt need is being met.

The probation officer's stated function is "to advise, assist, and befriend." Originally that was thought of in terms of offenders. Later it came to include others before the court for not criminal reasons—*e.g.*, matrimonial breakdown. Now it is embracing humanity as a whole, whenever and wherever relationships are at fault. The challenge is being met by the officers with unstinted use of time and energy. It must also be met by the community in whose name they act.

KIDSGROVE ACCOUNTS, 1957–8

Treasurer O. Lloyd Hurst, A.I.M.T.A., A.S.A.A., has published the abstract of accounts for Kidsgrove urban district in the form recommended by the Institute of Municipal Treasurers and Accountants.

The urban district council levied a rate of 19*s.* for the year, net rate income being £112,000 of which £68,000 was paid to Staffordshire county council. A penny rate produced £490.

The estimates were evidently well prepared and financial control effective during the year as committee expenditure varied little from estimate.

The balance in hand at the year end amounted to the substantial sum of £22,300, but Mr. Lloyd Hurst points out that £8,000 of this figure has been allocated to meet capital expenditure. In 1957–58 capital expenditure on general fund account totalled £25,000, £4,000 of which was met direct from revenue.

Advances for house purchase total £285,000, and a surplus of £1,300 on the year's working was carried to the general fund revenue account.

The council continue to contribute £10,000 to the housing revenue account, equivalent to former statutory contributions. A rent review was made resulting in increases from April 1, 1958 : a further levelling of rents was made at this time with the result that only four different rents are now charged for post-war houses, that is for two, three, and four bedroomed houses and for bungalows. The council owns 1,670 dwellings valued at £2¼ millions.

In addition to the sound management of its revenue expenditure and income the council has wisely refrained, as far as possible during the period of high interest rates, from borrowing long term. Latest loans pool interest rate was 3·9 *per cent.*

The council has spent £500 on an O. & M. survey.

ANNUAL REPORT OF CHIEF INSPECTOR OF FACTORIES ON INDUSTRIAL HEALTH

The first separate annual report of the chief inspector of factories on industrial health was published recently. In his letter of presentation to the Minister of Labour and National Service, the chief inspector says that, while a large part of the work in connexion with industrial health inevitably falls on the

medical branch, a significant part of the work of the whole of both the general inspectorate and the other specialist branches is directly related to industrial health. In reviewing the work of the year it is noted that the number of examinations of young persons carried out by appointed factory doctors for certificates of fitness for employment under the Factories Acts was 448,144 —a reduction of 25,822 on the previous year. Rejections among male young persons numbered 462 and among female young persons 750, decreases of 92 and 165 respectively on the previous year. During 1957 it became evident that factory occupiers were not giving sufficient attention to arrangements for first-aid treatment in the factory. Measures to stimulate recruitment and training of first-aiders which were discussed during the year have subsequently been taken. The subjects of noise in industry, dust in card rooms in the cotton industry, and of dust and fumes in foundaries, are also referred to in the report. In the chapter on industrial diseases, poisoning and gassing, particulars are given about cases of industrial poisoning or disease notifiable under s. 66 of the Factories Act, 1937 and under s. 3 of the Lead Paint (Protection against Poisoning) Act, 1926. The report contains separate sections discussing the information available about each of these diseases and commenting on special features of the statistics. Industrial dermatitis is one of the principal causes of disability and lost time from occupational disease.

WEST HAM FINANCIAL SUMMARY, 1957–58

Borough treasurer G. S. Cook, A.I.M.T.A., has published his home-produced booklet summarizing the finances of the county borough. It is well set out and effective in presenting clearly the figures summarizing the financial transactions of the county borough.

The population of the area at 166,000 continues its slight decline: the rate at 21*s.* 2*d.* was the same poundage as in 1938–39, but the rate product at £2¼ millions was 50 *per cent.* higher. Loan debt rose over the same period from £5¼ millions to £13½ millions, equal to £82 per head of population.

Tables and diagrams are included which show that the ratepayers find 8*s.* 9*d.* of each £ of corporation income and that this contribution costs the average West Ham ratepayer (occupying a dwelling rated at £25) 10*s.* 2*d.* a week.

Mr. Cook points out that the cost of housing fell slightly as a result of the introduction of a rent rebate scheme but that the net cost in the year was £179,000, equal to seven *per cent.* of the total rate expenditure. Rents produced half of total housing income.

The difficulty of financing capital expenditure during the year is noted: because of high interest rates much financing was done by temporary loans.

Ninety-five *per cent.* of rates due was collected in the year: arrears only represented 2.4 *per cent.* of the total amount due and were mostly in respect of properties where appeals remained outstanding.

BLACKPOOL WEIGHTS AND MEASURES DEPARTMENT

Having regard to the popularity of Blackpool as a seaside resort, and the consequent demands made by customers who want to buy prohibited articles on Sundays, Blackpool's record for compliance with the Shops Act must be considered satisfactory. During the year 1957–58 there were only 44 prosecutions under the Shops Act, all of them against occupiers of shops which were open on a Sunday. Fines totalled £97.

A total of 59,056 appliances for measuring or weighing were examined, of which 823 were found to be incorrect or not in compliance with the regulations. Generally speaking, the actual errors on most of the incorrect appliances were small and were due in the main to the normal wear and tear of trade use. The equipment examined on inspection ranges from small chemists' dispensing beam scales to 30 *ton* road weighbridges.

The re-introduction of some hand pumps at filling stations may appear to be a retrograde step but, says Mr. W. A. Ladds, the chief inspector, these are used for sales of petrol-oil mixtures for motor scooters or for sales of paraffin now much in demand for domestic heating. These instruments are a considerable advance on the hand pumps of bygone days.

The need for occasional inspection of underground petrol storage tanks was illustrated by complaints from occupiers of nearby premises investigated by the inspectors. Investigations and tests disclosed leakages from petrol tanks approximately 50 *yds.* and 30 *yds.* respectively from the property in which the complaints had originated. The two tanks in question had been underground for 32 and 33 years. Had these been tested at the 20th and subsequent years the leaks would no doubt have been found before the ground could have become so heavily contaminated as to cause inconvenience and danger to occupiers of property a considerable distance away.

In Blackpool a local Act provides for enactments relating to the sale of coal to apply to the sale of coke, wood fuel and peat. Judging by the figures the position appears generally satisfactory. The total number of bags of coal and coke examined which were exposed for sale was 4,890; 761 of these were re-weighed and 701 were found to contain correct weight and 60 short weight. The most serious case of short weight detected concerned 49 sacks of coke which were carried for sale on a vehicle and which were all found to be short weight; the total deficiency being six *cwt.* 103 *lbs.* It was also proved that a delivery of coke from the same vehicle, which had taken place before the interception by the inspector, was deficient of the represented weight of one *ton* by no less than three *cwt.* nine *lbs.*

The Blackpool corporation again hired from the Manchester city council a unit for the purpose of testing weighbridges. This was well justified. A total of 15 machines were tested, 13 being found correct and two in need of repair. This is a vast improvement on the old method which did not permit testing to the full capacity and was also costly in time and labour. In actual fact the two incorrect machines were rejected because they had errors at loads higher than it was previously possible to test under the old method and would, therefore, have been passed as correct had the testing unit not been hired.

BRISTOL PROBATION REPORT

It is always interesting to see how a system has grown up and changed. In the annual report of the Bristol probation committee, Mr. W. G. Cottrell, the chairman, says that following upon the passing of the Probation of Offenders Act, 1907, a committee recommended the appointment of one of the justices' clerk's senior assistants as probation officer and children's probation officer at a salary of £30 per year, to be increased, at the discretion of the justices, by annual increments of £10 to £50 per year. The city council appeared not to approve of this, and instead payment of a small fee for each case was substituted. The assistant clerk referred to being usually named in the order. Some cases were, however, placed under the supervision of officers of some social and religious organizations.

Next came the Criminal Justice Act, 1925, followed by the appointment of one man and one woman as part-time probation officers at salaries of £75 and £60 *per annum* respectively. It was not until 1932 that the first full-time male officer was appointed, the part-time woman officer continuing. They must have found it difficult to supervize 164 cases between them.

Today Bristol has a principal probation officer, a senior and 12 other officers, and on December 31, 1957, there were 637 cases as against 561 in the previous year. In addition, probation officers now undertake many duties that could hardly have been forseen 50 years ago, such as matrimonial conciliation and after-care in its various branches, while social reports for the courts continue to be required in increasing numbers.

It is satisfactory to learn that the year 1958 started with a measure of decentralization and with much better office accommodation than has been the case for many years.

STAFFORDSHIRE CHILDREN'S DEPARTMENT

The report of Mr. Harold H. Smith, children's officer of Staffordshire county council, which covers the year ended March 31, 1958, shows that the number of children in care at the end of the period was 1,085, and in addition the department was responsible for 73 children chargeable to and in the care of other local authorities. During the year the number of admissions totalled 540, a figure higher than last year, but the number of discharges during the same period was only 484 compared with 513 last year. The fact that fewer children were able to return to the care of their parents during the year resulted in a larger number of children remaining in care at March 31. Of the 540 children admitted 83 were taken into care because of eviction and 29 as homeless through other causes.

Boarding out has been adopted to a considerable extent, and it appears from the figures that in the majority of cases it has worked well. Of the 1,085 children in care at the end of the year 545 children were boarded-out with foster parents (50·2 *per cent.*) Of the 73 children being cared for by the department on behalf of other local authorities, 57 were boarded-out, making an overall total of 602 children boarded-out (52 *per cent.*) The number of children discharged during the same period was 176. Of this number only 29 children were returned to residential establishments because of incompatibility or ill-health, and 23

as a result of changed circumstances of foster parents. Arrangements were made for a large number of children to enjoy summer holidays in camps.

There has been a considerable increase in the numbers of juvenile offenders during the year, the number of cases recorded being 1,559. Compared with last year, this was an increase of 265. The number of approved school committals was 69 as against 33 during the corresponding period in the previous year.

The amount collected from liable relatives during the year in respect of contributions towards maintenance of children in care, amounted to £12,369, the amount collectable being £18,974 (65·2 *per cent.*). The corresponding figures for the previous year were £12,262 and £18,008 respectively (68·1 *per cent.*).

SCARBOROUGH ACCOUNTS, 1957–58

Borough treasurer H. Wilson, F.I.M.T.A., A.R.V.A. has sent us a copy of his admirable account of the year's working of this well-managed Yorkshire town of 43,000 people. It follows the same useful pattern as in previous years: we are glad to note also that Alderman F. C. Whittaker continues as chairman of the finance committee.

Rates in the £ amounted to 20*s.* 9*d.* of which 13*s.* 10*d.* was for the North Riding of Yorkshire county council. The catering and entertainments undertakings, as is customary, made useful contributions in aid of rates. During the year the corporation acquired for £112,000 the well-known Spa and spent a considerable sum on repairs: trading in the winter months only not unexpectedly produced a deficit. It will be interesting to see in 1958–59 the results of a full year's working.

The corporation resolved in March, 1956, not to make any further advances under the Small Dwellings Acquisition Acts until the borrowing position in relation to local authority loans became easier. No doubt this resolution will be reviewed during the current year in view of the government's wish to improve and extend borrowing facilities to house purchasers.

The average ratepayer in a seaside resort pays more than his brothers in the industrial areas. Thus in Scarborough average rateable value of houses is £28 and the occupants pay 10*s.* 11*d.* weekly in rates. Compare, say, 6*s.* 3*d.* in Leicester or 5*s.* 5*d.* in Walsall.

The corporation has no transport service, but nevertheless receives a minimum income of £4,000 a year from payments made by a 'bus company for the right to operate in the borough. In spite of increased charges for water, the undertaking recorded a deficit of £1,480 for the year.

PUBLIC HEALTH IN KENT

The county medical officer for Kent in his annual report for 1957, says one aspect of the rise in the economic well-being of the community is displayed in the sharp decrease in the incidence of the common notifiable infectious diseases: thus it is now 10 years since anyone died from scarlet fever in the county: it is four years since a case of diphtheria occurred in a child under 15 years of age and no case of smallpox has occurred in children for the past 11 years. During 1957 the number of deaths from tuberculosis was eight for each 100,000 of the population as compared with 56, 20 years ago. On the other hand there was an increased incidence of poliomyelitis up to 380. In Kent, as elsewhere, the domestic help service continued to increase, particularly in the provision of services for old people and an increasing use is being made of the evening and night services. Kent is a pioneer in the establishment of a family help service and a child help service. Under the first service temporary help is provided as an alternative to children being taken into care by the children committee during the absence of the mother in hospital, and sometimes because of the death of the mother or desertion by her. The other service is concerned with the rehabilitation of problem families. The problem, though serious, is a limited one and 50 new cases can be dealt with each year without difficulty. It has been found that amongst those working in the domestic help service are women drawn from the unskilled and artisan classes who are anxious to do social work and have revealed admirable qualities of compassion, sympathy and understanding. The health visitor, with her knowledge of maternity and child welfare, diet, nutrition and understanding of human relations is also available.

WELFARE OF THE ELDERLY IN LEICESTER

Amongst the interesting matters mentioned in the annual report of the Leicester city welfare committee is a reference to the increased provision which is being made for the accommodation in the council's homes of old people for short periods during the illness, domestic difficulties and holidays of their relatives. Owing to the pressure on the residential accommodation in many parts of the country little is sometimes done in this connexion but Leicester provides a good example of an authority which is giving such help in spite of the difficulties. The increased number of applications received, especially during the holiday periods, has shown the importance of providing a welcome break for both the old people and their relatives. Those providing accommodation for the elderly, whether local authorities or voluntary organizations, are experiencing special difficulties owing to the increased age and infirmity of many of the residents and have found it necessary to provide more help in assisting them. The higher ages of those in homes is shown by the figures given in the Leicester report. Ninety-two *per cent.* of the residents were over 70 years of age, 50 *per cent.* over 80 and eight *per cent.* over 90.

THE REPORT OF THE MANCHESTER CHILDREN'S COMMITTEE

Nineteen fifty-seven was a busy year for the Manchester children's officers. We can realize what a gap in our social service was filled by the passing of the Children's Act, 1948, from reading that of the children discharged from care during 1957, 93 *per cent.* had been received into care under that Act and only 6·3 as a result of a fit person order under the Children's and Young Persons Act, 1933. One imagines that this proportion would vary considerably in different parts of the country—some juvenile benches, for instance, seem to make far more use of the fit person order machinery than others.

It is interesting to read that great efforts are made to avoid the removal of children from home and their reception into care. The impression is sometimes gained by the public that local authorities' officers are over-eager to assume the responsibilities entrusted to them by Parliament; this report shows such an assumption to be wholly false; we read, for instance, ". . . a substantial increase in the number of applications rejected during the current year as compared with the previous year is due, to a large extent, to the careful examination of applications, and to the early visiting and interviewing after the initial application has been made."

The report gives details of the work at all the homes maintained by the committee, and it affords most instructive insight into a branch of the social services which, one feels, should never be necessary, but which, alas! is clearly only too much needed.

THE CITY OF WORCESTER: DEPUTY CHIEF CONSTABLE'S REPORT FOR 1957

Owing to the regrettable events which led to the suspension of the chief constable this report is submitted by the deputy chief constable. His comments on this matter are, of course, brief and restrained but the affair must have added considerably to the anxieties of those who have the responsibility for maintaining the morale and efficiency of the force.

Recruiting continued to be less than is necessary, although the vacancies on December 31 (15) were five fewer than at the beginning of the year. The authorized establishment is 116. The failure to reach full strength has made it impossible to reduce the working hours as is desired, and, indeed, the expansion of building on the city outskirts is making still further demands on the resources of the force.

The vehicle fleet was augmented by a light-weight motor-cycle, but this has not proved entirely satisfactory because it is not fast enough to compete with those ridden by irresponsible motorcyclists whom the police need from time to time to check, nor is it heavy enough to be equipped with V.H.F. radio which means that it can keep in touch with headquarters only when a telephone is available.

LANCASHIRE FINANCES, 1957–58

In the last financial year Lancashire county council spent £46¼ million in providing services for two million people. Ratepayers paid for a quarter of this expenditure: the central government contributed two-thirds.

Rates were precepted at 12*s.* 6*d.* and this levy resulted in an increase in the balance in hand by £½ million to £1¼ million at the year end, not by any means an excessive figure in relation to total expenditure, and modest indeed by comparison with the proportionate balances held by many county districts.

Loan debt increased in four years from £15¼ million to £26¼ million, equal to £12 7*s.* per head of population. Most of the debt was raised for education with the police service second.

The miscellaneous expenses section of the finance committee accounts contains a number of interesting items. For example, in spite of its long coastline, Lancashire is not involved in heavy expenditure for coastal defence: in fact the total cost is less than that incurred in having the county accounts audited.

These and many other facts are given by county treasurer N. Doodson, F.I.M.T.A., F.S.A.A., in the Abstract of Accounts, a well-designed volume, based on the model form of accounts recommended by the Institute of Municipal Treasurers and Accountants.

CITY OF SALFORD: CHIEF CONSTABLE'S REPORT FOR 1957

The chief constable thinks there is reason to suppose that the opening of the new headquarters, and the publicity that accompanied that event, had some beneficial effect on recruiting. Of the 89 applications from men 40 were received after the new premises were taken into use in the middle of August. The net gain in strength during the year was six (27 gains and 21 losses) giving an actual strength of 291 with an authorized establishment of 353. The increase is said " not to be sufficient to make any substantial reduction in the strain on our resources," Seven cadets joined the force direct, with exemption from national service, and three others joined after doing national service.

The importance attached to crime prevention is shown by the system by which whenever a policeman (uniform or detective) finds in the ordinary course of his duties that security arrangements in any premises are, in his view, defective, he visits the responsible person to call his attention to the matter. This is followed up, where necessary, by a visit, arranged by the detective superintendent, of an officer with expert knowledge to give further advice.

MAGISTERIAL LAW IN PRACTICE

The Oxford Times. September 26, 1958.

ASSAULTED P.C. AT FAIR

Eynsham Man Fined £10

Oxford magistrates on Tuesday imposed fines totalling £10 on a young Eynsham man convicted of assaulting two police officers on the last day of St. Giles' Fair.

He was Michael Pratley, a 22 year old labourer, of 19 Hanborough Road, who had been remanded in custody for a probation report.

Supt. L. North, the Deputy Chief Constable, said that five days before the offences Pratley had been fined £20 for assaulting a policeman.

Pratley's father said his behaviour at home was quite satisfactory. He came into Oxford because there was little to do in Eynsham.

The deputy chairman, Sir Carleton Allen, Q.C.: It's only when he gets out with the gang that he gets into trouble: is that the position?—Yes.

Sir Carleton told Pratley: I suppose you realise that with this bad record you could have received nine months' imprisonment—an unpleasant prospect?

" You have had a taste of prison and we hope that has been enough, but if you go on like this that is where you will go.

" There are three things wrong with you. Drink—when you have had a few you get excited—a hot temper and bad company.

" You will be fined £5 for each of these offences. We hope you realise we have dealt with you leniently."

In addition, Pratley was bound over in the sum of £25 to be of good behaviour for 12 months. He was ordered to pay the fines at the rate of £2 10s. a week.

The learned chairman pointed out to this man that he was liable to nine months' imprisonment for this second offence of assaulting the police. Section 12 of the Prevention of Crimes Act, 1872, provides that " where any person is convicted of an assault on any constable when in the execution of his duty, such person shall be guilty of an offence against this Act, and shall, in the discretion of the court be liable either to pay a penalty not exceeding £20 . . . or to be imprisoned for any term not exceeding six, or in case such person has been convicted of a similar assault within two years, nine months . . ."

There is no right to claim trial by jury, as that right, for a summary offence punishable by imprisonment for more than three months, does not apply to assaults (s. 25 (1), Magistrates' Courts Act, 1952).

In this case, in addition to imposing a fine, the court bound the defendant over in the sum of £25 to be of good behaviour for 12 months, which it was quite entitled to do as a matter of " preventive justice." (*R.* v. *Sandbach, ex parte Williams* (1935) 99 J.P. 251; *R.* v. *County of London Quarter Sessions, ex parte Metropolitan Police Commissioner* (1948) 112 J.P. 118; [1948] 1 All E.R. 72; *R.* v. *London Sessions Appeal Committee, ex parte Beaumont* (1951) 115 J.P. 104; [1951] 1 All E.R. 232.)

The decision in *Beaumont*'s case that no appeal lay against an order to find sureties for good behaviour is now of no effect, because of the Magistrates' Courts (Appeals from Binding Over Orders) Act, 1956, which gives a right of appeal to quarter sessions where a person is ordered by a magistrates' court to enter in to a recognizance to keep the peace or to be of good behaviour.

The Birmingham Post. September 13, 1958.

STEPMOTHER'S CONDUCT " ALMOST INHUMAN "

Mrs. Agnes Tait (33), of Grange Road, Middlesbrough, was sent to prison for a month at Middlesbrough yesterday after Mr. B. Lauriston, prosecuting for the N.S.P.C.C., said her conduct towards two little boys was " almost inhuman."

She admitted wilfully neglecting Robert Tait (seven) and David Tait (six), the children of her husband's previous marriage.

" She made them outcasts," Mr. Lauriston said. " They were unfed, unwashed and unwanted. They were turned out of the house in the morning and left to wander around begging for food. Police often found them late at night and took them home."

One night, when a woman found them sitting in a park, one of them said: " Mummy said we were not to go back in."

Explaining that the boys had to live in a dirty attic, Mr. Lauriston said: " She will have nothing to do with them. For them, she has not a spark of humanity."

The court ordered that the two boys should be cared for by the local authority till they are eighteen.

Mrs. Tait told the court: " With my husband unemployed I lost my temper with them. I have five of my own, and I have no home for them."

In this case the adult court dealt with the offence and at the same time made fit person orders in respect of the children.

Section 61 (1) (*b*) (i) of the Children and Young Persons Act, 1933, provides that a child or young person who, being a person in respect of whom any of the offences mentioned in sch. 1 to the Act has been committed, requires care or protection, is a child or young person in need of care or protection.

Neglecting a child or young person under the age of 16 years in a manner likely to cause him unnecessary suffering or injury to health is an offence mentioned in sch. 1 to the Act, being an offence under s. 1.

Section 62 (1) provides that if a *juvenile court* is satisfied that a child or young person brought before the court is in need of care or protection, the court may either—(*a*) order him to be sent to an approved school; or (*b*) commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him; or (*c*) order his parent or guardian to enter into a recognizance to exercise proper care and guardianship; or (*d*) without making any other order, or in addition to making an order under either of the last two foregoing paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purpose by the court.

Section 63 (1) provides that *any court* by or before which a person is convicted of having committed in respect of a child or young person any of the offences mentioned in sch. 1 to the Act or any offence under s. 10 of the Act, may—(*a*) direct that the child or young person be brought before a juvenile court with a view to that court making an order under s. 62, or (*b*) if satisfied that the material before the court is sufficient to enable it properly to exercise jurisdiction, may itself make any order the juvenile court might make. The court in Middlesborough acted under (*b*).

The appropriate local authority is deemed to be a fit person, and orders may be made committing children and young persons to their care (s. 76). Under s. 75 (3) a fit person order may remain in force until the child or young person attains the age of 18 years.

NOW TURN TO PAGE 1

The maximum term of imprisonment which may be imposed on a person who is in default in payment of a sum of any amount enforceable as a civil debt is six weeks. (Magistrates' Courts Act, 1952, sch. 3.)

PERSONALIA

APPOINTMENTS

The Board of Trade have appointed Mr. D. J. Hardy to be Custodian of Enemy Property for England as from November 25, 1958, in place of Mr. S. H. Wallis, O.B.E., who is retiring from the police service.

Mr. T. C. B. Hodgson, 50, has been appointed (subject to the Home Secretary's approval) chief constable of Berkshire. Mr. Hodgson, who was selected from 59 applicants, served previously with the Lancashire constabulary (1927–1955), and from 1951–55 was chief superintendent of the traffic and communications branch. He was assistant chief constable, Birmingham, from June 1, 1951.

Dr. Malcolm James Pleydell, deputy medical officer and deputy principal school medical officer for Northamptonshire, has been appointed medical officer of health for Oxfordshire, in succession to Dr. Thomas Anderson, who resigned owing to ill-health.

Mr. Maurice John Knowles, 39, of Selsey, Sussex, has been appointed an additional probation officer for the county of Dorset, as from January 1, next.

RESIGNATION

Dr. Ian McCracken, county medical officer of health, County Durham, for the past 21 years, has resigned on health grounds. His resignation takes effect as from February, 1959.

RETIREMENTS

Mr. Richard Gill, assistant chief constable, Hampshire, since 1952, is to retire. He joined the Hampshire force in 1919; in 1936 was promoted inspector, in 1941 was promoted superintendent, in charge of the special branch, and in 1949 was appointed detective chief superintendent. His resignation is to take effect on December 31, next. Chief superintendent Broomfield has been appointed to succeed him.

Detective-superintendent John Pretsell Jamieson, Metropolitan Police, is retiring. He joined the Metropolitan Police in 1926, and has been commended by the Commissioner of Police 29 times.

OBITUARY

Mr. Guy Southern, the clerk to the Burnley (county) justices until his retirement in May, 1957, died on November 14, 1958. He was the senior partner in the firm of Southern, Jobling and Ashworth, solicitors, Burnley, and had been clerk to the justices for 31 years, having succeeded his father, Mr. Walter Southern, who also held that office for many years. Mr. Southern was a former member of the council of the Justices' Clerks' Society, and an honorary member of the Lancashire Justices' Clerks' Society.

The death has occurred of Mr. O. Gwyn Owen, aged 69, assistant clerk at Pwllheli magistrates' court for more than 40 years.

Sir Charles Davies, formerly (1933–34) president of the Incorporated Leeds Law Society, and a former alderman of Leeds city council, has died, aged 72.

ADDITIONS TO COMMISSIONS

GLOUCESTER COUNTY

The Hon. Mrs. Patricia May Bourke, Cambridge House, Cambridge, Gloucester.

James Thomas Burslem, Wyndcliff, 94 Shellards Road, Longwell Green, Bristol.

Gordon Cuthbert Cryer, Dunkirk Farm, Hawkesbury Upton, Nr. Badminton.

The Hon. Mrs. May Southey Dickinson, Rose Cottage, Painswick, Gloucestershire.

Henry Gordon Fisher, Longmoor Farm, Ebrington, Chipping Campden, Gloucestershire.

Jack Kimberley Garland, Fairview, Vinney Green, Mangotsfield, Bristol.

Miss Alice Higgs, The Flat, Under-the-Hill House, Wootton-under-Edge, Gloucestershire.

Francis Geoffrey Little, May Lawn, Mitcheldean, Gloucestershire.

Cyril Edward Hugh Minns, The Chestnuts, Wick, Bristol.

Dr. Nora Naish, M.B., Algar's Manor, Iron Acton, nr. Bristol.

Herbert Leslie Parsons, Mirfield House, Churchdown, Gloucestershire.

REVIEWS

Hadden's Local Government Act, 1958. By John Moss. London: Hadden, Best & Co., Ltd. Price: 11s. 6d., post free.

The Local Government Act, 1958, is difficult, especially in its financial provisions. The publishers have done well to arrange for this guide to the provisions of the Act to be prepared by Mr. Moss, with his long experience of local government—first under the old poor law and then in the office of a county council. The sections are straightforwardly annotated, and a useful feature is that, wherever it will be useful, extracts have been given from ministerial statements in the House of Commons. Although these statements will not bind the courts if a doubtful question of interpretation is litigated, they are nearly always helpful in practical administration. In addition to these quotations, the notes on sections give careful and complete cross-references to the provisions of the Act itself. Without being overloaded, each section is supplied with a useful explanation of its purport and of its relation to other provisions of the Act and to other statutes. At the end of the Act there will be found explanatory circulars, issued from the Ministry of Housing and Local Government and the Ministry of Health; the book is up to date in this respect as at the end of September, 1958. No doubt more formidable books upon the Act can be expected, but even when these become available Mr. Moss's present work will not be superseded as a handy guide. It is of convenient size, and inexpensive, so that (in addition to copies bought for office use) local government officers and councillors can be advised to obtain personal copies, in order to help them to a better understanding of the new Act.

"Taxation" Key to Profits Tax. Edited by Percy F. Hughes. London: Taxation Publishing Co., Ltd., 98 Park Street, London, W.1. Price 12s. net.

This is a companion volume to the *Key to Income Tax* brought out annually by the same publishers. It is the fifth edition dealing with Profits Tax, and has been revised and reissued to incorporate the provisions of the Finance Act, 1958. The narrative portion is provided with a thumb index as well as the ordinary index, so that the central headings of the subject can be readily picked up—such as Losses and Capital Allowances or Appeals, Assessment, and Collection.

After this narrative portion of the book, will be found the text of all existing statutes which deal with profits tax. These are surprisingly numerous—the list of them occupies a whole page of the book. Fortunately for themselves, those of our readers who are engaged in local government and magisterial work are not obliged to make themselves familiar with the law of taxation of profits. The solicitor in private practice is however obliged to know something of it, since he may at any time be asked to advise. For him, and for the practising accountant, this "Key" will, like the *Key to Income Tax* on which it is modelled, provide the information required for an ordinary day's work.

The Problem Family. Four Lectures given at an I.S.T.D. Conference. London: I.S.T.D. Price 3s. net.

Perhaps one of the things that will strike social historians of 100 years hence about the 1950's in Great Britain is the extraordinary facility and ingenuity with which quasi-technical jargon was manufactured to describe common social issues. "The Problem Family" is an expression which has arisen quite recently —nobody seems to know who should claim its authorship—but it is, one supposes, a convenient method of denoting families who are continually in need of every kind of succour from the State and never seem to learn from their errors, or to profit greatly from the help lavished on them.

Mrs. W. E. Cavenagh, in the first of the lectures included in this pamphlet, says that the expression is an administrative classification rather than anything else and then adds: "The social concomitants of being a problem family appear to be such features as low intelligence on the part of one or both parents, poor state of health, poverty, irregularity of employment, unsuitable spending habits, bad and overcrowded housing, general bad management and lack of foresight"—a definition with which all who work in the courts, especially in the juvenile courts, would readily agree.

That such families exist at a time when education expenditure by the State is at a record level, and when mass unemployment has become a thing of the past, seems well-nigh inexplicable. But the contributors to this symposium do not concern themselves over much with the question of who is to blame for the existence

of problem families; they are more preoccupied with the methods by which they can be assisted. One thing does emerge: all these people are in some way immature, and Mr. T. A. Ratcliffe deals at length with the issue of adult immaturity, though he does not attempt to explain why this phenomenon should exist in such a State as ours. As one reads these very able lectures one cannot avoid the impression that the heart of the problem has been missed. It is admirable, and of course urgently necessary, that every possible assistance should be given to people who show themselves incapable of running their lives and those of their children along rational lines: but it is surely important that we should go into causes: at what stage for instance does a developing adolescent so miss the boat that he becomes an adult who, if he marries, will produce a problem family? The feeling of the present reviewer at any rate is that a thorough examination of our education system is needed—an examination directed from a sociological rather than an academic angle. If we are to begin to achieve a state of affairs wherein the problem family ceases to be a social burden, we must, surely, look to our methods of inculcating ideas of citizenship. None of the people discussed in this very interesting booklet are behaving as responsible citizens. Whose fault is it? The community as organized today, renders tremendous and sustained services in rescuing these people from the consequences of their own inadequacies; but can we be sure that is not at least partly to blame for their production in the first place?

INS AND OUTS

A correspondent to *The Times* recently wrote a protest against the ambiguities of legal phraseology, and quoted as an example the following extract from a law report:

> "His Lordship, sitting in bankruptcy, stood over this motion, on behalf of a petitioning creditor, until the end of the month."

The juxtaposition of the two verbs is certainly unfortunate and, to the lay reader, probably unintelligible. To the lawyer, though it is certainly lacking in elegance of diction, the sentence conveys its meaning only because "to stand over" is one of those prepositional phrases which have acquired conventional meanings in a legal context. Every judgment bristles with them; this is particularly interesting having regard to what Fowler has called

> "the cherished superstition that prepositions, in spite of the incurable English instinct for putting them late, must be kept true to their name and placed before the word they govern. 'A sentence ending in a preposition is an inelegant sentence' represents a very general belief."

Fowler, who enjoyed "debunking" this kind of "superstition," instances the case of Dryden who,

> "an acknowledged master of English prose, went through all his prefaces contriving away the final prepositions *that he had been guilty of* in his first editions" (our italics).

Despite this august example, Fowler concludes that

> "the remarkable freedom enjoyed by the English in putting its prepositions late, and omitting its relatives, is an important element in the flexibility of the language."

So it would seem to Her Majesty's Judges. Many a judgment refers to an unsuccessful defence that had been "set up"; you look for a case in the list where it has been "set down"; "set-off" and counterclaim are often linked together, and sometimes contrasted, in actions of debt. Tradesmen who try to "pass off" their goods as those of another imitate the "get up" that the other affects—*i.e.*, the sort of package in which his goods are "put up." And it has even been "laid down," on high judicial authority, that money paid under a mistake of law cannot be "recovered back"; we have always found the word "back" a bit worrying since, on any showing, in conjunction with "recovered," it must be redundant. In defamation actions a false report may have been "put about"; motorists are sued by plaintiffs they have "run down"; in all sorts of cases heavy bills of costs are "run up." One company makes another a "take over" bid; shares on the market are quickly "taken up"; junior counsel may advise a solicitor in a difficult case to "take in" a leader. (The client himself may have been previously "taken in" but not, one hopes, by his legal advisers). In cases of breach of contract the would-be vendor may be heard to complain that the sale he had hoped to effect has "gone off"; though, strangely enough, if his attempt to sell had "come off," or "been brought off," it would have been a matter for rejoicing. Such subtleties make the English language a delight to its adepts, and the despair of any foreigner who ventures on its unfamiliar ground.

The flowing tide of Americanisms in colloquial speech has vastly increased the use of prepositions where none is really necessary. People who used, quite simply, to "face" their problems now "face up to" them; on holiday, they no longer "meet" acquaintances, but "meet up with" them. Reporters are not content with "writing"—they must "write up" a story; or they rush to the nearest post-office and "phone up" the sub-editor. Flying from London to Milan, they cannot "stay" a night in Paris; they must "stop off" or "stay over." The film-artist's understudy has to "stand in for" him; the boy who had "made a date" is "stood up by" the girl-friend who, at the last moment, has found something better to do. The actor in a broadcast play does not seek to convey the dramatist's meaning to his audience; he must "put it across" to them. Viewers do not watch television or hear radio-programmes; they "look in" or "listen in."

Many of these neologisms seem tasteless and vulgar because they are pleonastic and slovenly ways of saying things that could be more tersely and more precisely expressed. Prepositions are all very well in their place; but what *is* their place—before or after the noun they govern? Euphony and usage must be the deciding factors. Stylistic faults may be committed by the writer who contrives a clumsy and tortuous periphrasis, merely for the purpose of avoiding a preposition at the end of a sentence, as well as by one who sprinkles his "offs" and "ins" and "ups" about the page in places where they are not needed at all.

Shakespeare's robust style never baulked at the prospect of a final preposition where he felt it was required. "Go to"; says Hamlet to Ophelia, "I'll no more on 't." The famous soliloquy "To be or not to be" speaks of "the dread of something after death":

> "That makes us rather bear those ills we have
> Than fly to others that we know not of."

"We are such stuff," says Prospero, "as dreams are made on." Leontes is told by Antigonus, in *The Winter's Tale*:

> "You are abus'd, and by some putter-on
> That will be damn'd for 't."

Macbeth, brooding over his intended murder of Duncan, fears that

> "his virtues
> Will plead like angels, trumpet-tongued, against
> The deep damnation of his taking-off."

Examples might be multiplied; but Shakespeare would never have given birth to a pleonasm like the American "You must come and visit with us." Nor can we imagine any English writer guilty of the solecism—"Is that the book you wanted to be read to out of?" That indeed is to pile Pelion upon Ossa in the matter of style. A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Guardianship of Infants Acts—*Wife given custody of child—Husband states that child refuses to go to her—Remedies.*

A wife applies for an order under the Guardianship of Infants Act, and is granted the custody of the 14½ year old daughter who was at the time living with the father. The father opposed the application and the girl stated that she would prefer to live with her father. The child now flatly refuses to go to live with the mother. The wife took proceedings against the husband under s. 7 (5) of the Guardianship of Infants Act, 1925, as amended, and s. 54 (3) of the Magistrates' Courts Act, 1952, for failing to give up the custody, but at the hearing the father stated that he had asked the child to go to the mother but she had refused. He undertook to take the child to the mother's house. The summons has been adjourned to see if he carries out his promise.

In the event of the child's refusing to stay with the mother it appears to me that the only action the mother can take is to bring the child before the juvenile court as being beyond her control, although it has been pointed out to the mother that, unless the juvenile court in effect ignores the decision under the Guardianship of Infants Act, it would have little option but to send the girl to an approved school or commit her to the care of the local authority. The juvenile court would probably be very loth to do this, as although the supervision at the father's home is not satisfactory the conditions would not seem to justify sending her to an approved school.

I would appreciate your advice on the following points in particular and on any general advice you could give me on the situation.

(*a*) Do you agree that no action can be taken against the father if the magistrates are satisfied that he is not refusing to give up the custody, it being the child who refuses to leave him?

(*b*) Has the mother any other remedy apart from bringing the child before the juvenile court as being beyond her control?

(*c*) Do you consider that the child's present attitude compared with the mother's attitude that she would prefer the child to be sent away rather than continue to live with the father, would be "fresh evidence" sufficient to enable the father to apply for the order to be revoked? The father was advised at the original hearing that he could appeal to the High Court but he has not done so.

RADON.

Answer.

(*a*) The court would require to be satisfied by evidence that the child refused to go to the mother. In dealing with the question of custody, the court must in accordance with s. 1 of the Guardianship of Infants Act, 1925, regard the welfare of the infant as the first and paramount consideration, and a girl aged 14½ might well be asked to give evidence in the proceedings. If she, in fact, refuses to go to her mother, and the father satisfies the court that he is doing what he can to comply with the order as to custody we are of opinion that proceedings under s. 54 (3) of the Magistrates' Courts Act, 1952, would not succeed.

(*b*) We think that the mother's only effective remedy is to bring the girl before the court as being beyond control.

(*c*) Fresh evidence is not essential for the variation or discharge of orders under the Guardianship of Infants Acts. The husband might well apply for a variation or discharge of the order and in support he could call the girl to give evidence.

2.—Highway—*Road believed older than* 1835—*Making up for new traffic.*

The status of a mud and stone track leading through rough land and over two railway bridges from one main road to another is in dispute. The track is wide enough for a horse and cart and has been used by pedestrians, and occasionally horse drawn and possibly powered vehicles, for many years. An industrial estate is adjacent, and it is now proposed to develop the land on each side of the track for the same purpose. The owners of this land assert that the track was a highway before 1835 and is repairable by the inhabitants at large.

If this assertion is correct, is the highway authority liable to surface and if necessary widen the track in a manner desirable to carry modern heavy industrial traffic and vehicles at the expense of the general ratepayers, or can the adjoining industrial land owners be called upon to pay the extra cost of surfacing, and if necessary widening, the mud and stone track for the convenience of industrial user?

PEDNERA.

Answer.

By way of evidence, if the track existed before 1835 as a highway for carriages and the railway was built after 1835, the bridges would normally be the width of public bridges and not that of accommodation bridges. Assuming that the track was a highway for carriages before 1835 no contribution can be required from the adjoining owners, and the highway authority is liable to make up the road to meet the needs of modern traffic, but at its width as dedicated, *i.e.*, they need not widen. If the track was merely a highway for foot passengers, the authority is liable to make up the track only as a footpath. They cannot, however, make up the track under the Public Health Act, 1875, s. 150, or the Private Street Works Act, 1892, as a carriageway at the expense of the frontagers because the latter can object that the track is a highway repairable by the inhabitants at large. In this case the industrial owners will, if they are anxious for the road to be made up, be virtually compelled to pay towards it, by an agreement under s. 146 of the Public Health Act, 1875.

3.—Licensing—*Monopoly value on current on-licence—Licensed premises closed during currency of licence—"Banking"—Licensing Act,* 1953, *s.* 7.

You may be interested to know that an application was made at the transfer sessions for this borough under the Licensing Act, 1953, s. 7 (5) for the determination of the monopoly value of the above-mentioned premises. I understand that such applications have been made in other parts of the country, but I have not noticed any report of any such applications.

In this case, solicitors acting on behalf of the owners gave upwards of 14 days' notice to me and to the surveyor of customs and excise, of their intention to make the application. At the hearing it was stated that trading on the premises had ceased two days earlier, and that it was proposed, if the application was successful, to surrender the licence at the next general annual licensing sessions in connexion with an application for a new licence which would then be made.

The surveyor of customs and excise was present in court and raised no objection to the application. The monopoly value having been agreed between the owners and the licensed property valuer the licensing committee fixed the monopoly value accordingly.

The view has been expressed that this procedure is applicable in cases where trading has ceased, so long as the licence is surrendered before the end of the year in which it is current. It is suggested however that monopoly value determined under this section cannot be "banked" beyond the date of expiry of the licence, *i.e.*, April 5 in any year.

NALIN.

Answer.

The on-licence in question will continue in force until April 5 of the vear next after the general annual licensing meeting at which it was last renewed (Licensing Act, 1953, s. 45 (3)). The Licensing Act, 1953, s. 7, does not require that licensed business shall have been carried on during the entire period of the currency of an on-licence surrendered as part of a scheme which includes the grant of a new on-licence with a set-off in monopoly value: indeed, the phrase "last in force for other premises" in para. (*b*) of subs. (2) of the section suggests a contemplation of the very situation as that to which our correspondent draws attention. We see no fault in the procedure outlined.

In our vol. 119 at p. 471 we had a Note of the Week on "Banking of Monopoly Values": this note is directed against a procedure whereby monopoly value is determined after which licensed business is discontinued and the amount of monopoly value as determined is then carried forward as an £ *s. d.* book entry into a future in which the licence has ceased to be current.

4.—Public Health Act, 1936, s. 269—"*Moveable dwelling*"—*Permanently affixed to realty.*

By s. 269 (8) of the Public Health Act, 1936, the expression "moveable dwelling" includes *inter alia* "a van or other conveyance whether on wheels or not," used for human habitation.

A double-decker bus body (the engine, wheels, steering, brakes, and so forth having first been removed from the vehicle) is adapted internally for human habitation and is used for human habitation during the summer months. To secure stability the bus body is embedded in concrete fore and aft, so as to be immoveably fixed to the ground, and it has stood on its present site for years and has been rated. The concrete just covers the bus bumpers and grips the front and rear of the bus body to bumper height. Can you refer me to any authority or opinion, as to whether this double-decker bus body remains a "moveable dwelling" within the meaning of the section, notwithstanding that it is immoveably and permanently affixed to the realty and rated.

A. KLUGE.

Answer.

It seems clearly not to be a moveable dwelling, in fact or in law. We should regard it as a building within the meaning of part II of the Public Health Act, 1936. Cases to this effect are given in *Lumley's* notes to s. 53 *et. seq.*

5.—Quarter Sessions—*Customs and Excise Act*, 1952, *s.* 304—*Penalty—Recovery.*

Under the provisions of s. 304 of the Customs and Excise Act, 1952, a person convicted of an offence under that section is liable to a term of imprisonment not exceeding two years and/or a penalty of three times the value of the goods, or £100, whichever is the greater. If the offender is dealt with by the justices it would appear that they have power to impose a term of imprisonment in default of payment of the penalty, but if the case is tried on indictment I can find nothing which suggests that quarter sessions has the same power. It is presumed that the Crown may recover an unpaid penalty, imposed in a magistrates' court, as a civil debt but, in your opinion, does this apply equally to a penalty imposed under s. 304 by quarter sessions ? MUFUR.

Answer.

In a magistrates' court such a penalty is recoverable, not as a civil debt, but as a sum adjudged to be paid by a conviction. The procedure for its recovery at quarter sessions is regulated by s. 14 of the Criminal Justice Act, 1948. This is without prejudice to its possible recovery by distress (*see* Quarter Sessions Act, 1849, s. 17).

6.—Rating and Valuation—*Inspection of void properties—Recovery when change of occupation not notified.*

A house and bungalow stand at some distance from the main road on private property, the entrance gate to which is always chained and padlocked. Claims for void periods on completion of the usual declaration form have been allowed at times in the past. Recovery of rates on these properties has grown progressively difficult of late and a final notice issued in July, 1958, produced a reply that these properties had been void from April, 1957, to April, 1958, a statement which the rating authority has reason to doubt. The usual checks by way of the voters' list, collection of house refuse, etc., have proved inconclusive. Please advise:

(*a*) Do any powers for inspection remain with rating authorities ?

(*b*) If not, must the authority refund or allow rates for past void periods on written application only, and if so can this be for any period in the past six years ?

(*c*) Is there any onus of proof on the ratepayer ? If so, what kind of proof can be asked for ?

(*d*) If there is onus of proof on the ratepayer and rates remain unpaid, can the rating authority in the absence of such proof safely issue a summons for rates for part of the alleged void period ?

(*e*) Can the council take advantage of any powers of inspection conferred on them in other capacities to gain entrance ?

It seems desirable that a rating authority should be able to inspect when it chooses. Cases have occurred of ratepayers making *bona fide* claims, but inspections have shown that beneficial occupation continued although the property was "empty" in the sense that the ratepayer no longer resided there.

A.R.W.R.H.

Answer.

The council have no power of inspection in their capacity of rating authority. Their powers of inspection under the Public Health Acts and the Housing Act, 1957, are given specifically for the purposes named in those Acts. The local authority is a single entity, and there can be no objection to using information gained by inspection in one capacity for the purpose of its duty in another capacity, but the initial inspection must have been made in a capacity in which entry for inspection is authorized by statute. Otherwise, entry would be an actionable trespass, and a person lawfully upon the premises would be entitled to resist. This answers (*a*) and (*e*) in the query. The answer to (*b*), (*c*) and (*d*) is that the rating authority's duty is to collect rates from the person named in the rate book as occupier, unless cause is shown for not doing so. They may properly accept a written statement from him, that he has gone, or is on the point of going, out of occupation, if they believe the statement. A letter in this sense written at the time has *prima facie* a higher value as evidence than a letter written long afterwards. If the rating authority are not satisfied, they should proceed for recovery, if the ratepayer can be found; the burden of proof rests in our opinion in the person who asserts that a change has taken place.

7.—Theatre—*Excise licence for the sale of intoxicating liquor—Conditions, etc.*

A cinema in this county borough has obtained from the local authority an occasional stage play licence permitting, subject to certain structural alterations, the performance of stage plays on not more than 75 days per year.

I should be obliged by your opinion as to whether the premises so licensed become a theatre within the meaning of the Licensing Act, 1953, so as to permit an excise licence for the sale of intoxicants to be obtained without a justices' licence.

If such an excise licence were obtained, would it be restricted to the days of stage performances ? NEWOR.

Answer.

In the absence of an undertaking not to apply for an excise licence for the sale of intoxicating liquor such as was approved in *R.* v. *Yorkshire West Riding County Council* (1896) 60 J.P. 550, the licence granted under the Theatres Act, 1843, exempts the holder from the provisions of the Licensing Act, 1953 (Customs and Excise Act, 1952, s. 150 (2); Licensing Act, 1953, s. 164 (2) (*d*)). Therefore, an excise licence for the sale of intoxicating liquor may be obtained without the requirement that the holder of the stage play licence must first have obtained a justices' on-licence. An excise licence so obtained will be subject to the conditions set out in the proviso in para. 10 of sch. 4 to the Customs and Excise Act, 1952, and a contravention of any of these provisions is punishable under s. 239 (1) of that Act.